Supreme Court, U.S.
FILED

971645 APR 2 1998

OFFICE OF THE CLERK

No. 95-843

In The
Supreme Court Of The United States

OCTOBER TERM, 1997

GERALD D. BUSH,
Petitioner,

v.

ZEELAND BOARD OF EDUCATION, MICHAEL Z. JONES, KENNETH HARPER, JAY KLINGE, WILLIAM RBOERTSON, JAMES GALER, ROBERT LARSEN, MARY ANN ZIMMERMAN, ZEELAND EDUCATION ASSOCIATION, MICHIGAN EDUCTION ASSOCIATION.
Respondents

ON APPEAL &/OR
PETITION FOR A WRIT OF CERTIORARI
TO THE 6TH CIRCUIT COURT OF APPEALS

APPEAL &/OR
PETITION FOR WRIT OF CERTIORARI

Gerald D. Bush
724 E. Central
Zeeland, Michigan 49464
616-772-2398

March 31, 1998

10 pp

QUESTIONS PRESENTED

I. ON APPEAL:

In first civil rights case by pro se plaintiff will the Court accept on appeal &/or under supervisory powers questions of due process involving statute interpretation, jurisdiction, clerk's power and prejudice at the Court of Appeals?

A. Specifically will the Court exercise its appellate jurisdiction to resolve questions of jurisdiction in appeal of right by statute interpretation in a pro se civil rights case where conflict exists between extension of time to appeal granted under 28 USC sec 2107 by District Court, where appeal was within time allowed, but Court of Appeals rejected jurisdiction claiming under FRAP Rule 4 appeal was not timely?

B. Will court hear this case to determine power and/or extent of power, if any, of appeals court clerks to determine questions of jurisdiction and dismissal of appeals by right under local rule?

II. PETITION FOR WRIT OF CERTIORARI

Will Court review facts and law questions where state employee alleges enslavement for 20 years, appeals to federal court for protection under civil rights laws and district court dismissed prematurely and erroneously claiming civil rights laws offer no protection and court of appeals rejected jurisdiction?

1. QUESTIONS OF DUE PROCESS AT THE DISTRICT COURT

A. Will Court hear case where 7th Amendment jury trial right is unjustly avoided by granting motions to dismiss, summary judgment, and sanctions without following the rules or stare decisis?

B. Can Defense motions to dismiss, for summary judgment, for sanctions constitute unconstitutional harassment of the Plaintiff &/or interfere with justice in civil rights suit?

C. The district Court said no answer was required under the Rules when a motion to dismiss is filed and, therefore, Plaintiff could not move for default judgment. Does the Court agree?

D. In effect the District Court held the civil rights statutes do not protect whites from discrimination by whites. Does the Court agree?

E. Where statute and Courts' precedents specifically and Amendments in general protect pro se representation, will Court hear case where right is effectively denied and justice not served in violation of Rule 1, FRCP?

2. QUESTIONS ABOUT FACTS OF CASE

A. Will Court hear 13th and 14th Amendment 20th Century civil rights case of white on white enslavement, which also involves the 1st Amendment and government employer ?

B. In *Loudermill* the Court ruled property right employees had hearing rights before termination. In *Homar* same employees had right to prompt hearing after suspension without pay. Will the Court hear this case where Bush has been disciplined & virtually and effectively enslaved for 20 years by "one man" - government supervisor, been suspended with pay 3 times, deprived of employment for 5 years by subterfuge, fraud and lies, barred protections of and enforcement of law and union contract, transferred against will to bully's domain, denied transfer away, forced to flee hostile work place and been off work for the last 5 years because of hostilities - all in attempt to cause resignation and force from profession and in retaliation - and not had hearing or, alternatively, prompt and effective hearing by impartial decisionmaker?

C. Will review be given of a hostile workplace case that could easily have lead to workplace violence?

PARTIES

All parties are listed on the title page. However, the Defendants are divided into two general groups, government Employer Defendants and Union Defendants. (App C) Of the individual Defendants, all but one person are or were employed by Zeeland Board of Education.

Gerald D. Bush, the Plaintiff-Petitioner was hired in 1969 by the Zeeland Board of Education. Bush is a tenured teacher who quit the union in 1976. (App C) Bush has been a competent and successful teacher and past union leader.

The Zeeland Board of Education is also the employer for the majority of the Defendants. It is the controlling board of Zeeland Public Schools of Zeeland, Michigan. (MCL 38.73); Kenneth Harper was hired as Superintendent of Schools in 1979; Michael Z. Jones was hired to be Zeeland HS Principal in 1978 and continued in that position until about 1990 when he became Personnel Administrator also. He continued as Principal until about 1995. Currently he retains the Personnel position; Jay Klinge, was Assistant High School Principal before 1978 to now.

The Union Defendants include William Robertson, now retired Zeeland HS teacher, union member and union (ZEA-MEA-NEA) Grievance and Negotiations Chairman. He was employed by Zeeland before 1969; Robert Larsen and James Galer were both ZHS teachers, union members and members of the union (ZEA-MEA-NEA) Grievance and Negotiations Committee.; the Zeeland Education Association (ZEA), the local teachers union of Zeeland Schools; the Michigan Education Association (MEA) is the State teachers union, a branch of the National Education Association (NEA); Mary Ann Zimmerman is employed by the MEA, a parent union to the (ZEA), as advisor on grievance matters, etc. to the ZEA, Union Defendants and Mr. Bush.

TABLE OF CONTENTS

QUESTIONS PRESENTED i
PARTIES iii
TABLE OF AUTHORITIES viii
PETITION FOR APPEAL BY RIGHT 1
PETITION FOR WRIT CERTIORARI 1
FEDERAL COURT OPINIONS & ORDERS 1
JURISDICTION 2
STATUTORY PROVISIONS & RULES INVOLVED 3
SUMMARY OF PRIOR STATE PROCEEDINGS 6
SUMMARY OF FEDERAL PROCEEDINGS 6
REASONS TO ACCEPT THIS CASE 8

I.REASONS TO GRANT APPELLATE JURISDICTION 9

1.THE COURT SHOULD HEAR THIS CASE BECAUSE THE COURT OF APPEALS ERRONOUSLY DISMISSED THE APPEAL OF RIGHT ON JURISDICTIONAL GROUNDS. 9
A. The Decision Violates Justice 10
B. The Decision Violates The Rules. 10
C. Violations of Due Process 10
D. The Decision Conflicts With The Rule Enabling Act. 10
E. The Decision Conflicts With Equal Protection Of Law. 11
F. The Court of Appeals Did Not Attempt To Interpret The Statute. 11

2.THE COURT SHOULD HEAR THIS CASE TO DECIDE THE EXTENT OF THE CLERK'S POWER TO DECIDE QUESTIONS OF APPELLATE JURISDICTION, IF ANY, AND OTHER VITAL QUESTIONS. 12
3.THE COURT SHOULD RECONSIDER ITS SHORT TIMELINES 14

CONCLUSION 14

II.REASONS TO GRANT THE WRIT 15

1. SHOULD HEAR THIS CASE BECAUSE IT IS THE LAST CHANCE BUSH HAS TO SEEK A REMEDY FOR 20 YEARS OF HARASSMENT, DISCRIMINATION, SLAVERY, AND VIOLATION OF RIGHTS IN THE WORKPLACE BY THE EMPLOYER AND UNION AND THE FACTS ARE THAT THESE PARTIES HAVE TAKEN POSITIONS AGAINST BUSH DIRECTLY CONDEMNED BY PRIOR CASE LAW AND STATUTORY LAW. 15

2.SHOULD HEAR BECAUSE WORKPLACE DISCRIMINATION AND HARASSMENT LEADS TO WORKPLACE VIOLENCE. 17

3.THE COURT SHOULD HEAR THIS CASE BECAUSE IT INVOLVES THE 13TH AMENDMENT AND THE COURT HAS NOT OFTEN HEARD 13TH AMENDMENT CASES. 19

4. THE COURT SHOULD HEAR THIS CASE BECAUSE OF THE DEFENDANTS USE OF SANCTIONS TO HARASS THE PLAINTIFF AND THE DISTRICT COURT'S ABUSE OF THE POWER OF SANCTIONS AND THE INJUSTICE TO BUSH.20

5. THE COURT SHOULD HEAR THIS CASE BECAUSE THE DISTRICT COURT SANCTIONED BUSH FOR FILING A DEFAULT MOTION WHEN UNION DEFENDANTS DID NOT FILE AN ANSWER AS REQUIRED BY THE RULES. 22

6. THE COURT SHOULD ACCEPT THIS CASE BECAUSE BUSH HAS BEEN SANCTIONED UNJUSTLY FROM FILING ANY FURTHER SUITS AGAINST THESE DEFENDANTS. 23

7. WOULD THE COURT CONSIDER THIS CASE WHERE THERE IS ABUSE OF THE RULES AS A MEANS OF HARASSMENT OF A PRO SE PLAINTIFF BY DEFENDANTS ATTORNEYS AND THUS WHETHER THERE IS A VIOLATION OF THE COURT'S CODE OF CONDUCT? 24

8. THE COURT SHOULD HEAR THIS CASE BECAUSE: A.) IT TRULY REPRESENTS THE MANIFEST INJUSTICE SUFFERED BY PRO SE LITIGANTS; B.) IT DEMONSTATES THE INJUSTICE THAT JUDGES CAN PROVIDE BY MEANS OF DISMISSAL AND SUMMARY JUDGMENT; C.) IT DEMONSTRATES CLEARLY THE VIOLATIONS OF THE 7TH AMENDMENT. 24

A. Is The Injustice And Unequal Outcomes Of This Case Due To The Form Of Representation? 25

B. Dismissal And Summary Judgment Are Handy Andy Tools Of Injustice For District Courts And Guilty Defendants. 25

C. Judicial Decisions Disposing Of Cases Where Jury Trials Are Requested Violate The 7th Amendment and 28 USC sec 1981(a).27

9. THE COURT SHOULD HEAR THIS CASE BECAUSE IT IS CLEAR THAT UNIONS HAVE A FIDUCIARY DUTY TO BE FAIR, EQUAL AND NOT DISCRIMINATORY TOWARD REPRESENTEES WHO HAVE EXERCISED THE RIGHT TO DISASSOCIATE FROM THE UNION FOR POLITICAL, RELIGIOUS &/OR OTHER REASONS. 28

10. THIS CASE SHOULD BE HEARD BECAUSE THE LOWER COURT DECISION IS AGAINST FIRST AMENDMENT PROTECTIONS. 29

CONCLUSION 30

INDEX TO APPENDICES

APPENDIX A Decision of 6th Cir. Court of Appeals dismissing appeal for lack of jurisdiction (Nov. 3, 1997) a1

APPENDIX B Clerk 6th Cir. Order to Show Cause (June 6, 1997) a3

APPENDIX C Decision and Order of District Court (WD Mich) granting Defendants' Motions to Dismiss & Summary Judgment. (signed Feb. 27, 1997; filed Feb. 28, 1997) a4

APPENDIX D Decision of District Court denying Plaintiff Motion for Clarification and granting Extension of Time For Appeal. (April 16, 1997) a23

APPENDIX E Mandate of 6th Cir. (November 25, 1997) a24

APPENDIX F Decision of 6th Cir. Denying Motion to Recall Mandate for Purposes of Rehearing (December 22, 1997) a25

APPENDIX G Law and Rule Quotations a26

APPENDIX H Extension of Time Granted, A-530. (Jan. 22, 1998) a29

TABLE OF AUTHORITIES

Constitutional Provisions

Article III	
Amendments	
1st	3 4 15 24 29 30
4th	3
5th	3
7th	27
9th	3 15 29
13th	3 4 19 29 30
14th	3 4 11 17 14 24 29

Federal Cases (Internal cites omitted)

Adickes v Kress & Co, 398 US 144, 26 L Ed 2d 142, 90 S Ct 1598 (1970)	27
Arthur H. Richland Co. v Harper, (1962, CA5 Fla) 302 F2d 324	26
Bienvenu v Beauregard Parish Police Jury (1983, CA5 La) 705 F2d 1457	27
Board of Pardons v Allen, 482 US 369, 96 L Ed 2d 303, 107 S Ct 2415 (1987)	23
Bruce v Wade, (1976, CA5 Tex)537 F2d 850	26
Buchler v US, (1974, ED Cal) 384 F Supp 709	26
Business Guides v Chromatic Comm., 498 US 533, 112 L Ed 2d 1140, 111 S Ct 922 (1991)	22, 23
Campbell v Beto, (1972, CA5 Tex) 460 F2d 765	26
Cantrell v Connecticut, 310 US 296, 84 L Ed 1213 (1939)	30
City of Boerne, 521 US ___, 138 L Ed 2d 624, 117 S Ct ____(1997)	14
Clinton v Jones, 137 L Ed 2d 945, 970 (1997)	10, 22
Conley v Gibson 355 US 41, 2 L Ed 2d 80, 78 S Ct 99 (1957)	28

Dann v Studebaker-Packard Corp.
(1961, CA6 Mich) 288 F2d 201 26
Dennis v Higgins, 498 US 439,
112 L Ed 2d 969, 980, 111 S Ct 865 (1991) 28
Edwards v South Carolina, 372 US 229,
9 L Ed 2d 697, 83 S Ct 680 (1963) 29
Farretta v California, 422 US 806, 831,
45 L Ed2d 562, 95 S Ct 2525 (1975) 26
Gainey v Brotherhood of R. & S.S. Clerks, etc.
(1959, DC Pa) 177 F Supp 421, affd (CA3 Pa)
275 F2d 342, cert den 363 US 811 26
Goldberg v Kelly, 397 US 254, 25 L Ed 2d 287,
90 S Ct 1011, (1970) 10
Hensley v Eckerhart, 461 US 424, 76 L Ed 2d 40,
103 S Ct 1933 (1983) 25
Herbert v Lando, 441 US 153, (1979) 24
Hicks v Miranda, 422 US 332, 45 L Ed 2d 223,
95 S Ct 2281 (1975) 3 14
Holloway v Carey, (1979, SD NY) 482 F Supp 551 7
Jones v Mayer Co., 392 US 409, 20 L Ed 2d 1189,
88 S Ct 2186 (1968) 20
King v Wells, (1982 ED Mich) 94 FRD 675 27
Mastandrea v Gurrentz International Corp.
(1974, WD Pa) 65 FRD 52 26
Memphis Comm Sch v Stachura, 477 US
299, 91 L Ed 2d 249, 106 S Ct 2537(1986) 24, 26, 27
Offutt v US, 348 US 11, 75 S Ct 11, (1954) 24,28
Oyama v California, 332 US 633, 68 S Ct 269 (1948) 19
Rennie & Laughlin, Inc. v Chrysler Corp.
(1957, CA9 Cal) 242 F2d 208 26
Rogers v Westbrook, (1973, Ed Mo) 362 F Supp 353 27
Rutan v Republican Party of Illinois, 497 US 62 ___,
111 L Ed 2d 52, 110 S Ct 2729____ (1990) 3, 29

Shull v Pilot Life Ins. Co. (1963, CA5 Fla) 313 F2d 44526
St. Marie & Son, Inc. v Hartz Mountain Corp.
(1976, DC Minn) 414 F Supp 71 26
Talamini v Allstate Ins. Co., 470 US 1067,
85 L Ed 125, 105 S Ct 1824 (1985) 21
US v Bencs, 28 F.3d 555, 558 (6th Cir 1994) 26
US v Hastings, 461 US 499, 76 L Ed 2d
96, 104, 103 S Ct 1974 (1983) 2
United States v Lee, 106 US 196, 27 L Ed 171, 181,
1 S Ct 240, 16 Otto ___ (1882) 18
Yick Wo v Hopkins, 118 US 356, 30 L Ed 220,
6 S Ct 1064 (1885) 13 15 17 19 29 30
Vogelstein v National Screen Service
Corp. (1962, ED Pa 204 F Supp 591, affd (CA3 Pa)
310 F2d 738, cert den 374 US 840 reh den 375 US 873 26
Bush v Zeeland PS, (#92-1167, 122 L Ed 2d 676, 6
Bush v Jones, (#95-843) 133 L Ed 2d 844 6, 20
Bush v Donkersloot, et al., 1:97-CV-51 (W.D.Mich) 11 13
Bush v Zeeland BPW, 6th Cir., #97-1739 13 27
Bush v Rooks, et al, #1:97-CV-541, (WD Mich) 27

<u>State Cases</u>

Ross v Glaser, 220 Mich App 183 17

Statutory Provisions

Michigan Tenure Law,
MCL 38.71 et seq. 3 18
Michigan Labor Relations Act MCL 423.1 et seq 3 18
28 USC sec 1254 3 8 26
28 USC sec 1654 3 8 36
28 USC sec 2072, Rules Enabling Act, 10
28 USC sec 2107 3 7 8 9
42 USC sec 1981, 1983, 1985, 1986, 1988, and Title VII 3 25 27

PETITION FOR APPEAL BY RIGHT

Petitioner respectfully contends this should be an appeal by right, in part at least, since questions result essentially from policies adopted by the 6th Circuit Court of Appeals' apparent grant to their clerk of power to decide issues of jurisdiction via local Rule 8. Furthermore, Petitioner contends that the Court has supervisory powers and duties over rules questions under Article III and the Rules Enabling Act.

Here there is a conflict over jurisdiction with a statute and the district court on one side and a rule and the court of appeals on the other, while the petitioner is caught in the middle and denied due process of law in his appeal by right. Petitioner believes the statutory interpretation of the district court is correct. Furthermore, prejudice may play a role.

When policies of judicial procedure are decided and implimented by courts and a controversy developes, especially in jurisdiction, it should be a matter of appeal by right to the next highest court, in this case the Supreme Court.

Issues of jurisdiction are central to legal rights. It would be contrary to the jurisprudence of the judicial branch of government and the Constitution to let the current decision stand as is without review.

PETITION FOR WRIT OF CERTIORARI

(in the alternative or in addition)

Petitioner respectfully petitions for review of the decisions of the U.S. Court of Appeals for the 6th Circuit entered on November 3, 1997, refusing to accept jurisdiction of this civil rights appeal and its subsequent decision to refuse to recall the mandate and rehear or reconsider its decision and the decision of the District Court dismissing this civil rights suit. Justice Stevens granted extension of time to file this petition. App H.

FEDERAL COURT OPINIONS AND ORDERS

The decision of the 6th Circuit rejecting jurisdiction and denying recall of mandate and rehearing apparently were not published. Copies of those opinions are reproduced in Appendix A, at 1a & F at a25, respectively. The order of the 6th Circuit Clerk to show cause why the appeal should not be dismissed is reproduced in Appendix B at a3. The Decision and Order of the District Court

granting both Defendant groups motions to dismiss and summary judgment apparently was not published, but is reproduced in Appendix C at a4. The District Court's denial of Plaintiff's motion for clarification and grant of motion to extend time to appeal is reproduced in Appendix D at a23. Justice Stevens' grant of extension of time is reproduced in Appendix H at a29.

JURISDICTION

The 6th Circuit decision was entered Nov. 3, 1997. (App A, a1) Justice Stevens granted extension of time until April 2, 1998. A-530 (App H, p a29) Petitoner believes the Supreme Court has jurisdiction to review the facts and law of this case by appeal and/or writ of certiorari or both.

(1) Jurisdiction to review by means of writ of certiorari judgments of the Sixth Circuit is found in 28 USC sec 1254(1).

But Petitioner believes that jurisdiction by appeal also rises from the Rule making authority of the Supreme Court, since the 6th Circuit infers that a rule overweights a statute.

(2) Petitioner also believes that "original jurisdiction" exists in the special circumstances of this case by means of Constitution, Article III, since the Court of Appeals assigned discretionary powers to the Court Clerk concerning questions of jurisdiction by means of a local rule and the Supreme Court has supervisory powers over inferior courts.

As to (2), the Court in United States v Hastings, 461 US 499, 505, 76 L Ed 2d 96, 103 S Ct 1974 (1983) stated that:

> Supervisory Power [is] "guided by considerations of justice," McNabb v United States, 318 US 332, 341, 87 L Ed 819, 63 S Ct 608 (1943), and in the exercise of supervisory powers, federal courts may, within limits, formulate procedural rules not specifically required by the Constitution or the Congress. The purposes underlying use of the supervisory powers are threefold: to implement a remedy for violation of recognized rights, McNabb, supra, at 340, 87 L Ed 819, 63 S Ct 608; Rea v United States, 350 US 214, 217, 100 L Ed 233, 76 S Ct 292 (1956); to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before the jury, McNabb, supra, at 345, 87 L Ed 819, 63 S Ct 608; Elkins

v United States, 364 US 206, 222, 4 L Ed 2d 1669, 80 S Ct 1437 (1960); and finally as a remedy designed to deter illegal conduct, United States v Payner, 447 US 727, 735-736, n 8, 65 L Ed 2d 468, 100 S Ct 2439 (1980)."

Here Petitioner contends the Supreme Court should be "guided by considerations of justice," in exercising supervisory powers over both lower federal courts.

Specifically, as to the 6th Cir., these "courts may, within limits, formulate procedural rules not specifically required by the Constitution or the Congress." Apparently that includes "local rules." However, Petitioner believes that when lower courts do make such rules that it is within the supervisory power of the US Supreme Court to set the "limits" on these rule making powers of the lower courts in the interests of "justice" and an appeal by right should therefore exist. That is the case here.

Petitioner believes also that the Court has appellate powers to exercise in this case where statute interpretation is necessary in the issue of jurisdiction. See Hicks v Miranda, 422 US 332, 45 L Ed 2d 223, 236, 95 S Ct 2281 (1975)

STATUTORY PROVISIONS AND RULES INVOLVED

Rule 1 (1) is involved for it incorporates the principles of justice demanded by our Founding Fathers in the Constitution.

Involved in this Petition are three provisions dealing with jurisdiction of the Court of Appeals. (2) 28 USC sec 2107, (3) Federal Rules of Appellate Procedure, Rule 1 & 4, and (4) US Court of Appeals for the 6th Circuit, Local Rules, Rule 8, Motions and Motion Practice.

Another statutory provision involved is (5) 28 USC sec 1654 concerning representation pro se. Because of their length, all of the above are reproduced in Appendix G.

This Petition also concerns the Civil Rights statutes 42 USC sec 1981, 1983, 1985, 1986, 1988, and Title VII, the Bill of Rights 1st, 4th, 5th, 9th, 13th, 14th Amendments to the Constitution, plus Michigan Statutes including MCL 38.71 et seq. & MCL 423.1 et seq. (duty of fair representation + federal statute to the same effect.) These statutes are not quoted here, but it is maintained by Petitioner that they are not equally inforced.

SUMMARY OF THE CASE

Mr. Bush by this suit is fighting for, and had hoped for, protection of his right to work as a public school teacher and his equal right to speak, petition, associate or not, and believe and follow his conscience and/or religion, be relieved of slavery and, last but not least, to find the elusive JUSTICE.

The facts of Bush's employment are rather clear, except that Defendants still claim there was no subterfuge, or discrimination or fraudulent concealment or conspiracy or collusion or any misdeed to Bush. Regardless, there is evidence of it, some is circumstantial, some depends on credibility of witnesses and some is concrete.

Bush has taught public school at Zeeland since college graduation in 1969. He is over 50 and has been discriminated against for 20 years, since the arrival of Def. Jones in 1978. Discrimination by Jones results from animus towards Bush in general, but also because Bush exercised First Amendment rights, speech, letter writing, petition, religion, association, etc, and commerce outside the workplace, none of which Jones liked, and some other Defendants didn't like.

Jones and Defendants have enslaved Bush. He has been denied employment he should have had in the 80's for over 5 years by subterfuge in layoff and contract and fraudulent concealment. Bush has been disciplined and suspended when he should never have been. He has been forced to spend time and do hundreds of hours of work no others had to do and without pay (paid by salary) in violation of the 13th & 14th Amendments, plus all the work of these lawsuits. He has been denied virtually all due process rights. Consequently, this "hostile workplace" has caused Bush much grief, mental and emotional pain. Bush sought psychiatric-psychological help. But what could they do about a hostile workplace? They could do nothing, accept recommend quitting or leaving it somehow before workplace violence erupted.

Bush was blocked from transfer by Jones. Jones being Personnel Administrator could, and did, manipulate Bush like a pawn. Bush could not quit at almost 50. He is already more than 5 years short of retirement credits due to two layoffs by subterfuge in the 1980's created by Jones. (Union members with less seniority

have retired already.) Bush could never find another equivalent job for several reasons, one being Jones has ruined his reputation. Bush could only take sick leave.

Therefore, Bush has been off work for the last 5 years, at first with sick leave and disability insurance. Now nothing. In the last 5 years, Bush sought relief by various ineffective mechanisms, including more grievances, appeal to Michigan Employment Relations Commission, appeal to the Michigan Teacher Tenure Commission, Workman's Compensation, Social Security Disability and this civil rights suit. None effective.

The discrimination has been caused in major part by "one man," Def. Jones, Bush's immediate supervisor and Principal of Zeeland High School. Jones has been the "decisionmaker." The workplace BULLY. Jones takes disciplinary action without charges. His decisions are not reviewed. There are, effectively and in reality, no hearings and no impartial decisionmakers.

The Union and other Defendants have supported if not encouraged Jones in this discrimination for the same &/or different reasons. But whether they supported or not, the Union has not protected Bush, as it has a fiduciary fair representation duty to do. In fact, the Union Def on 6 (of 7) occasions (and more, if Bush had filed the grievances) barred Bush from seeking arbitration of grievances. The reasons given Bush at his last request were because he was not a member, did not pay dues and was "far right" or "right wing". Many specific facts are contained in the 25 page complaint.

This long term discrimination has affected Bush way beyond the workplace in innumerable ways, most unrecoverable and permanent, including trouble with police to interference with relationships with family, friends, and relatives.

Bush has approached this Court before, on two occasions, without success, due in part to the major lies, misleading and general unethical conduct of the attorneys representing Zeeland Schools. An application to Justice Stevens to disqualify them from further representation in this case was not submitted to him and was returned to Bush. Bush also therein sought to hold in abeyance other pending matters in order to focus on this petition. That also was not submitted to Justice Stevens. Subsequently and unjustly an under clerk at the Court of Appeals dismissed the civil rights appeal

for not filing a brief. Such is the justice available to the unrepresented.

Bush would ask the Court to hear the important questions raised by the case and decide the facts and law, since the lower courts have not done so or did so erroneously.

SUMMARY OF PRIOR STATE PROCEEDINGS

This is Bush's first civil rights case and first in federal court. Bush has attempted to find justice in various state forums with little success.

This case covers the last 20 years of Bush's employment with Defendant Zeeland Public Schools. Mr. Bush's history of litigation with the Defendants (Most litigation involved only employer (E), not individual def.) includes the following agency petitions; 4 teacher tenure petitions (E) (1 decision on merits, 4/1 in favor of Bush initially - subject of Bush v Zeeland Public Schools, 122 L Ed 2d 676, cert denied; 123 L Ed 2d 501 reh den.); 1 Michigan Employment Relations case against the union; 1 Workman's' Compensation case (E); plus 7 grievances (E) by or involving Bush, only one of which was allowed by the union to be arbitrated; 1 state civil case for violation of a written employment contract by fraud and subterfuge not heard on the merits (E+) (subject of Bush v Jones, (#95-843) 133 L Ed 2d 844, cert den; 134 L Ed 2d 572, reh den..

SUMMARY OF FEDERAL PROCEEDINGS

Two issues here are improper grant of dismissal-summary judgment and harassment. Right after the complaint was filed and served the Employer Def made motions to dismiss under Rule 12(c) and 56 about Sept. 17, 1996. (Mot. p 2, Bf p 1) Union Def motioned to dismiss under Rule 12(b)(1) & (6) on Sept 17, 1996. (Mot p 2) Then they moved again under Rule 12(c) & 56 on Nov. 25, 1996. (Bf p vii) Def endants also filed 3 motions for sanctions.

The District Court allegedly granted all Defendants motions to dismiss allegedly under Rule 12(b)(6), summary judgment under Rule 56(c) and sanctions motions without a scheduling conference or any discovery having taken place, oral arguments or chance to amend pleadings and denied Bush's only motion, a motion for default judgment based on the Union's failure to file an answer. (App C, p a5)

Bush by motion within 30 days requested clarification and extension of time to appeal because of other legal matters. Clarification was denied, but the extension of time was granted. (App D, p a23) Bush appealed within the District Court's time allowance. (This was Bush's first hesitant, but necessary, venture into federal court. Thus, he had not experienced all the procedures, time traps, etc. unique to federal court beforehand.)

On appeal the Clerk (6th Cir.) sua sponte demanded Bush show cause why the appeal should not be dismissed for untimeliness. (App B, p a3) Bush responded by 11 page brief, after requesting extension of time, that (1) it was not within the Clerk's authority to determine jurisdictional questions and therefore, (2) requested the matter be assigned to a panel of the Court and (3) he be allowed to brief the issue ex-parte and (4) argue the matter before the Court of Appeals.

However, without notice to Bush or any response, the matter was assigned to a panel, but no briefing was allowed or any oral argument. This, to Bush at least, violated the authorities he set out in the brief.

The next thing Bush heard the panel had decided Bush's appeal was not timely, despite it being within the time allowed by the District Court, and was dismissed. They asserted FRAP Rule 4 controlled and the appeal was late. (App A) (Bush does not agree.)

Bush, at the time, was deeply involved in writing a brief in a second civil rights case involving different defendants at about Thanksgiving time and did not have time to check the time requirements for moving for rehearing. When he did, he discovered that it was only 14 days and they had already passed. Thus, the mandate issued. (App E, p a24) Thereafter, Bush could only move for recall of the mandate and then ask for rehearing, which he did. The Court, inequitably, allowed Defendants to brief the issue, but did not allow Bush time to respond. Then the 6th Cir. denied recall and thus rehearing. (App F, p a25) (Remember, all this happened around Thanksgiving, Christmas, New Years time - when the Courts are closed more often and people are very busy.)

The facts are clear. The 6th Circuit Court of Appeals denied jurisdiction to the appeal in this civil rights case and did not decide the merits. (App A, p a1) It did so even though the appeal

was within the time extension granted by the District Court pursuant to 28 USC sec 2107. (See App D, p a23) Therefore the question exists as to which is controlling, the statutory grant of time extension by the District Court or Rule 4 of the Rules of Appellate Procedure?

Bush believes that the 6th Cir is in error and that 28 USC sec 2107 controls and therefore the appeal was dismissed unjustly and in violation of 2107 and FRAP Rule 1(b).

But all the questions are not resolved there. Remaining are questions of deep prejudice against pro se litigants in violation of 28 USC sec 1654, the above being but one example. Remand will not cure that problem.

Further there are great questions of the case itself from 20 years working and attempting to work in a hostile workplace where it could have and likely would have led to work place violence with some people. Questions under the Bill of Rights and civil rights laws that the Court should hear, if only for insight and information. But also for Bush. 20 years is long enough for a white to be enslaved by a white slave masters.

REASONS TO ACCEPT THIS CASE

Petitioner respectfully requests the Court hear this case and decide questions on appeal and/or by writ of certiorari. The Court should hear because it raises important questions of justice, statute interpretation and due process of law, plus substantially affects the rights of the Petitioner.

Under (SC) Rule 10 (a) and (c) guidelines for acceptance of cases. (1995 Rules)

> "(a) a US court of appeals has rendered a has rendered a decision in conflict with another United States court of appeals on the same important matter; . . or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court as to call for an exercise of this Court's supervisory power."
>
> "(c) When a . . . US court of appeals has decided an important question of federal law that has not been (as far as Petitioner knows), but should be, settled by this Court,

or has decided a federal question in a way that conflicts with applicable decisions of this Court."

First, it is usually difficult for nonattorneys to know if a case conflicts with other cases. In this case Petitioner believes that there is a conflict. But, in addition, the decisions in this case call for the Court's supervisory powers because both the district court and 6th Circuit Court of Appeals have "departed from the accepted and usual course of judicial proceedings" (a) and in the decision of the district court "decided a federal question[s] in a way the conflicts with applicable decisions of this Court." (c)

The 6th Cir. has "departed" by (1) rejecting jurisdiction of an appeal by right in apparent conflict with a statute under which the District Court correctly granted extension of time. Secondly, it "departed" by (2) assigning duties of determining jurisdiction to the clerk and lower level clerks who may not even be attorneys.

The 6th Cir. (3) by its actions to refuse jurisdiction has "sanctioned" the dismissal by the district court of this valid civil rights case, even though the district court "departed from the accepted and usual course of judicial proceedings"

Next (4) the 6th Circuit has (under "c") "decided an important question of Federal law," that being the statute granting power to the district court to extend time to appeal, in an unlikely way, ie: contrary to justice, the rules, and the statute.

I. REASONS TO GRANT APPELLATE JURISDICTION

The Court should accept this case as an appeal, since it involves conflicting statute and rule interpretation, powers of federal court clerks and limits, if any, and authority to grant these powers by the lower courts and the damage it does or may do to justice.

1. THE COURT SHOULD HEAR THIS CASE BECAUSE THE COURT OF APPEALS ERRONOUSLY DISMISSED THE APPEAL OF RIGHT ON JURISDICTIONAL GROUNDS.

The 6th Circuit dismissed Bush's appeal by right claiming it lacked jurisdiction. It didn't. It had jurisdiction. (App A)

All of the following are against the Court of Appeals decision. First, the Court did not interpret 28 USC sec 2107. Second, if they did, they did not interpret it correctly. Third, rules do not carry more weight than statutes enacted by Congress.

Fourth, the District Court granted an extension and Bush filed his appeal within the time allowed. That even the Court of Appeals agrees with. (App A, p a1) Fifth, an extension of time begins to run when granted, not at some vague time before it was granted, as the Appeals Court did here. Sixth, presumming all of the above are irrelevant, the 6th Cir. decision violates justice and due process. Seventh, it violates the Rules Enabling Act, 28 USC sec 2072 [28 USCS sec 2072]. Eighth, a subsequent appeal in a different case did not have the same jurisdiction problem in similiar circumstances, thus it is evident the 6th Circuit does not treat all appellants equally in terms of jurisdiction.

A. The Decision Violates Justice

All the rules are to be interpeted in such a way as to do substantial justice. FRCP Rule 1. (App G) That was not done here. "Like every other citizen who properly invokes that jurisdiction [federal court], respondent has a right to an orderly disposition of her claims." - Clinton v Jones, 137 L Ed 2d 945, 970 (1997) That is what Bush would like, but a just disposition.

B. The Decision Violates The Rules.

FRAP Rule 1 (b) contends that the rules are not to affect jurisdiction. (App G, p a26) But here that is exactly what the 6th Cir. does in regards to the jurisdiction of this case. Used a rule to reject jurisdiction.

C. Violations of Due Process

The Court first determines that Bush's motion for clarification was not a "time-tolling motion." (App A, p a1) But that is arguable at least. However, Bush was not allowed to argue orally this point at the 6th Cir. and they knew he asked to. (App A, p a1) There was no hearing or oral argument at any time in the whole case, despite Bush's requests. (See Bush's response to Order to Show Cause titled "Appellant's Argument For Jurisdiction In The Court of Appeals." See p 2, 6-11 quoting and citing Goldberg v Kelly, 397 US 254, 25 L Ed 2d 287, 289, 90 S Ct 1011, (1970) {Oral argument necessary before termination of substantial rights.}) Furthermore, Bush was not even allowed to brief the question.

D. The Decision Conflicts With The Rule Enabling Act.

In statements about the Rule Enabling Act, 28 USC sec 2072 [28 USCS sec 2072] the Court has said:

> "The Act authorizes the Court `to prescribe general rules of practice and procedure," but provides that such rules `shall not abridge, enlarge, or modify any substantive right.' " - Business Guides v Chromatic Comm., 498 US 533, 551, 112 L Ed 2d 1140, 111 S Ct 922 (1991)

Obviously, the 6th Cir. applied their local rules and the FRAP in such a way as to "abridge" and "modify" Bush's "substantive right" of appeal by right by claiming his appeal untimely when it was timely.

E. The Decision Conflicts With Equal Protection Of Law.

In a subsequent appeal in a different case with different defendants Bush asked for an extension of time and it was granted and the appeal was apparently docketed and set for briefing. Why the difference here?

In Bush v Donkersloot, et al., 1:97-CV-51 (W.D.Mich) the Court dismissed the case on October 17, 1997. Bush asked for reconsideration and extension of time to appeal. On November 26, 1997 the Court denied reconsideration, but granted the motion to extend time to appeal to December 17, 1997. Bush filed the notice of appeal on December 17, 1997. Apparently the Court has accepted jurisdiction because it has assigned a case number, (#97-2346, 6th Cir.) and scheduled briefing. Furthermore, Bush did not receive any "show cause" order from the clerk. If the Court has done the same in other appeals (which Petitioner has no way of knowing), then it appears that the Court has violated the 14th Amendment's "equal protection of the law" provision in this case. Why? Because appellant is pro se?

It is apparent, therefore, the decision should be reversed and jurisdiction was proper. However, the inquiry should not stop there. There are other factors relevant to justice to consider.

F. The Court of Appeals Did Not Attempt To Interpret The Statute.

The District Court correctly applied a statute to grant extension of time. (App D, p a23) However, the Court of Appeals paid no attention to the statute. It never attempted to interpret it. It seemed more interested in supporting its own rules than upholding a logical statute interpretation.

For all these reasons the Supreme Court should consider this statute on appeal.

2. THE COURT SHOULD HEAR THIS CASE TO DECIDE THE EXTENT OF THE CLERK'S POWER TO DECIDE QUESTIONS OF APPELLATE JURISDICTION, IF ANY, AND OTHER VITAL QUESTIONS OF DUE PROCESS.

The Court should hear this case on appeal because the 6th Cir. apparently has exceeded its authority by assigning discretionary duties to determine appellate jurisdiction to the Court's Clerk in some instances (& under clerks). The Clerk claimed to have that power in this case. (Appendix B & A) Petitioner contends the clerks do not have such power under the Constitution or statutes.

Congress has not made any statute that Petitoner is aware of that delegates to a clerk discretion to decide jurisdictional questions on appeal (nor should it) or other substantial questions regarding our rights. Yet, apparently, that is what the Clerk claimed was his duty under the 6th Circuits' Local Rule 8. (see clerk order to show cause, App B, p a3 and local Rule 8 at App G, p a27-28) Apparently the 6th Circuit agreed. (App A)

This seems to be an improper delegation of authority by the 6th Circuit. One that should be reviewed by this Court. Plus, the Court should consider how vulnerable clerks are to the whims and pressures of unethical attorneys. Bush knows.

Questions About The Power Of The Supreme Court Clerk.

Note these facts: Bush attempted to disqualify two of Respondent's Attorneys, Jon G March being one, for prior unethical conduct at the Supreme Court, (& below) by application to Justice Stevens. Bush included as evidence an unethical letter attempt by Mr. March to have the Supreme Court Clerk dispose of Bush's application for extention of time in a prior case without presentation to Justice Stevens and thereby deny opportunity for Bush to petition to the Court. Thankfully Mr. Suter was not sucked in. However, the current Application to Justice Stevens was never given to him. Instead it was returned to Petitioner. Also included and returned was an Application to hold in abeyance briefing in other cases. In

one the under clerk dismissed the appeal because briefing was not held in abeyance. (6th Cir., #97-1739) Some clerk actions should be reviewed. These are supervisory questions for the Court to decide. This is not the first time something similiar has happened here. This undermines the power and authority of a Justice to provide "Justice".

Other Questions About The Power of 6th Circuit Clerks.

While Bush has been diligently working long hours on this Petition a 6th Cir. under clerk has been continually demanding an appeal brief in another important civil rights case that was dismissed without warrant. Bush has submitted several requests to hold the briefs in that case at least until he could finish here. But the under clerk would not wait and dismissed Bush's appeal under Local Rule 8. Bush v Zeeland BPW #97-1739 That is unjust. Soon Bush will have to file another Petition with the Supreme Court. In another case, the brief is almost due, but Bush has not had any chance to work on it and it will not likely get done on time. Bush v Donkersloot, (#97-2346) Bush does not believe clerks should have such powers for several reasons.

One reason being the affront they might take when argued with, as here, and the discrimination resulting thereafter. Discrimination that makes them anything but an "impartial decisionmaker." Another is the powers of unethical attorneys to influence clerks v the absence of "equal opportunity" for pro se plaintiffs.

In Yick Wo v Hopkins, 118 US 356, 30 L Ed 220, 226, 6 S Ct 1064 (1885), Justice Matthews writing for a unanimous Court clearly warned against allowing "one man" to control another, or many others, or the liberty and rights of others. The facts of this case will once again bring that great and sound reasoning to mind and the continued necessity for it. (See Yick quotations herein, post, at 15, 17, 19) This sound and historic reasoning is also applicable to the authority of court clerks and/or his underlings to whom they in turn grant authority.

Plus there is the fact that no such authority has been delegated to the Clerk either by the Constitution or statute.

Plus there is the question of unequal treatment &/or prejudice by the clerk(s). Bush was not allowed to brief issues.

In response to the clerk's order to show cause (App B, p a3), Bush argued in a brief to the Clerk jurisdiction should be a decision of the court not the clerk, the matter should be referred to a panel of the court and then he should be allowed to brief the issues re: timeliness. (C/A agrees with these facts, see App A, p a1-2) Bush apparently convinced the Clerk to refer the matter to a panel, but he never was allowed to brief the issue of timeliness or orally argue the issue. Therefore, the panel decided the issue on only Bush's brief to the Clerk. (App A) See City of Boerne, 521 US _____, 138 L Ed 2d 624, 117 S Ct _____ (1997) dissent of Breyer, O'Conner, Souter.("the Court should direct the parties to brief the question . ." p 668) Why was Bush prevented from briefing the question here? Was it because the district court and he were right?

In contrast, when Bush moved for recall of the mandate (App E) before Christmas in order to allow for rehearing, both Respondents-Defendants here (appellees there) were invited (by?) to brief the issues when they never even requested the chance. Furthermore, Bush was never given a chance to reply, and certainly not invited to. The rejection of his motion to recall was immediately issued after Appellees briefs were filed. (App F, E) Thus, Bush was not able to show that appellees were misleading the court or show the error.

In addition, both sides asked for oral arguments, but none were provided which appears to violate due process & FRAP #34.

3. THE COURT SHOULD RECONSIDER ITS SHORT TIMELINES.

The Court needs to reconsider its awfully short timelines to better accomodate justice, as these facts demonstrate. Time is everything for pro se civil rights plaintiffs who do not get paid for pursuing justice. The road of "open access to the courts" is landmined with short time lines. Justice is not served by short time lines. But that is what the Court of Appeals attempts to promote.

CONCLUSION

Bush here is unholding a statute. The Court of Appeals is against the statute and district court and supposedly upholding a rule. Conflicting statute interpretation resolution is one of the duties of the Supreme Court. One or more justices believe that in appellate

jurisdiction the case cannot be refused. Hicks v Miranda, 422 US 332, 45 L Ed 2d 233, 236, (1975) In this case avoiding a statute interpretations allowed the court to avoid a decision on the merits of the appeal and caused manifest injustice to Bush, again. Not what Congress intended.

II. REASONS TO GRANT THE WRIT

1. SHOULD HEAR THIS CASE BECAUSE IT IS THE LAST CHANCE BUSH HAS TO SEEK A REMEDY FOR 20 YEARS OF HARASSMENT, DISCRIMINATION, SLAVERY, AND VIOLATION OF RIGHTS IN THE WORKPLACE BY THE EMPLOYER AND UNION AND THE FACTS ARE THAT THESE PARTIES HAVE TAKEN POSITIONS AGAINST BUSH DIRECTLY CONDEMNED BY PRIOR CASE LAW AND STATUTORY LAW.

Bush came to the Federal Courts to seek protection of his 9th Amendment right to work and First Amendment rights related to and separate from work and for protection from a hostile workplace that could have lead to workplace violence.

> "But the fundamental rights of life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the Commonwealth `may be the government of laws and not of men.' For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." - Yick Wo v Hopkins, 118 US 356, 30 L Ed 220, 226, 6 S Ct 1064 (1885) (emphasis added)

Is it "intolerable"? The Defendants and lower courts find it tolerable. Of course it is not them who has suffered.

Above Yick Wo clearly warns against allowing "one man" power to control another. It also warns about:

"commit[ting to] the unrestrained will of a single public officer the power [over others, adding] "there is nothing in the ordinance to guide or control his action . . . no rules for impartial [action, nor can] "impartiality and oppression [be] prevented . . [and it is] clear [can] bring ruin [to the person], while others . . . may be actually benefited by what is done to their neighbor; and, when we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism and other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such power, for that becomes apparent to every one who gives the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void." (quoting with approval Baltimore v Radecke, 49 Md. 217) Id. at 227.

Here one man, Df Michael Z. Jones, has used tactics "easy of concealment and difficult to be detected and exposed" to control Bush's life for 20 years like a true slave master. Jones still controls almost every hour and minute of Bush's life by forcing Bush to engage in this burdensome litigation to vindicate his rights without counsel. He has attempted to and effectively has forced Bush from employment for reasons of "enmity or [&] prejudice, from partisan zeal or [&] animosity, from favoritism and other improper influences and motives easy of concealment and difficult to be detected and exposed." By controlling Bush's work life through false allegations, lies and subterfuge, Jones has been able to control just about every other aspect of Bush's life that one can conceive of from Absences to Vacations (too many to list here).

The Union and its members have benefitted. Dues paying members hirees replace Bush when he is not working (now & for 10 years) and therefore they have engaged in "nonaction" instead of protecting Bush, as they have a fiduciary duty to do. Id. In fact when Bush has begged on hands and knees for the chance to arbitrate grievances against Jones, they have repeatedly denied Bush protection in their "partisan zeal" Id. because he is "right wing" and does not pay dues to the Union, they said. They admitted that if

Bush were a Union member things would be different. (An important question of law is: Why does Bush, as a nonunion member, have to beg to arbitrate anyway? He should be able to arbitrate without the union's permission.)

2. SHOULD HEAR BECAUSE WORKPLACE DISCRIMINATION AND HARASSMENT LEADS TO WORKPLACE VIOLENCE.

It is evident from the above that discrimination in the workplace is part of this case by both the employer and union that has a lawful duty to represent fairly and equally. There are not many other situations in life where people of different beliefs are forced to work together. In most other situations, one can leave or not associate. But the workplace is different. Quitting can be very costly - career ending in this case.

Thus, there are not many other situations in life where discrimination can turn good people into violent ones than the workplace. One reason is that people have little choice but to work, therefore the right to work is a necessity. People often cannot change jobs without great losses. And why should they have to for unjust reasons? Such is the case here.

Bush has been discriminated against for 20 years in a hostile workplace by hostile adversaries.

> "[N]o reason exists except [for] hostility . . which in the eye of the law is not justified. The discrimination is therefore illegal, and the administration which enforces it [the discrimination and hostility] is a denial of equal protection of the laws and a violation of the 14th Amendment of the Constitution." Yick Wo Id., 228.

Thus it has long been clear that discrimination is an act of "hostility" by those who discriminate. Id. Discrimination, being an act of hostility, then often leads to violence. One federal court has stated that violation of civil rights leads to violence. ( ) See also Ross v Glaser, 220 Mich App 183 (nonworkplace harassment cause of violent revenge shooting) It also leads to murder and suicide. "Lottery employee kills bosses, himself." Holland Sentinel, March 7, 8, 1998 (AP news Newington, Conn.) (employee's complaints of unfair treatment plus irregularities by management in lottery affairs and attempted exposure to newspapers - a tie to free

speech and possible link to retaliation by bosses.) (Other reports show students subjected to bully's commit suicide.)

Many laws have been enacted to protect employees from discrimination - Civil Rights, 1981, 1982, 1983, 1985, 1988, Title VII; Teachers Tenure Act, MCL 38.71 et seq.; Michigan Labor Relations Act, MCL 423.1 et seq.; When employers and unions take actions contrary to laws meant to protect employees, they not only create a "hostile" work environment (as here), but are hostile to the employee (as here).

It should not be a surprise then that employees often react violently in response to this hostile workplace &/or the discrimination by hostile persons. It has been reported that "Homicide is the leading cause of workplace fatalities thoughout the state [of Michigan]." Holland Sentinel, 3-19-98. Thus, workplace violence is an important question for the Supreme Court to consider. It is important for another reason, also.

> "In such cases there is no safety for the citizen, except in the protection of the judicial tribunals, for the rights which have been invaded by the officers of the Government, professing to act in its name. There remains to him but the alternative of resistance, which may amount to crime." - United States v Lee, 106 US 196, 27 L Ed 171, 181, 1 S Ct 240, 16 Otto ___ (1882)

As the the Court has said, supra, "there is no safety for the citizen, except in the protection of the judicial tribunals." Resort to "crime" Id. for a little revenge is the only alternative. (FNote: at the 10 or so days of Bush's recent workman's compensation hearings, the Michigan State Police were in attendance to "protect" Df Jones - when he is the creator of the hostile workplace. It seems that there is a great misunderstanding here. Of course Bush would not have been seeking workman's compensation in the first place, if the judicial machinery of Michigan worked properly, justly and without prejudice. Bush has been tempted to violence, but not submitted. Further, he is convinced that others would have, had they endured half of what Bush has endured (Others have in other situations -go postal - for example.).)

In this case, all Michigan state courts and all federal courts and two state agencies have had their chances to "protect" Bush.

Each refused to protect Bush (or tied and failed), protecting instead the money bags - government and unions. Thus the only protection remaining is the Supreme Court.

Bush believes there is:

> "No reason whatever, except the will of the [Defendants], is assigned why [Bush] should not be permitted to carry on, in the accustomed manner, [his] harmless and useful occupation [teaching in public school], on which [he and his family] depend for a livilihood [plus retirement, insurance and ability to pursue happiness and avoid poverty]." Yick Wo, Id., at 228,

In Oyama v California, 332 US 633, 68 S Ct 269 (1948) the Court stated it reviews independently both the legal issues and factual matters with which they are commingled. That is what Bush would have here because of the importance of the issues and the prejudice experienced below, which will not abate any time soon.

3. THE COURT SHOULD HEAR THIS CASE BECAUSE IT INVOLVES THE 13TH AMENDMENT AND THE COURT HAS NOT OFTEN HEARD 13TH AMENDMENT CASES.

The Court should accept this case because it involves the severe oppressions the 13th Amendment intended to protect the people from. There is nothing more oppressive in the spirit of slavery than barring a man from work unjustly or forcing him to work without pay, as here. Here Mr. Bush has been barred from work or harassed, while at work for the government, no less, for 20 years, basically his entire prime working lifetime. Plus he has been forced to do work without pay when others of like class did not have to do the work but received the same pay. Plus, even a meager substitute teaching job for a different employer was stolen from him by and with the help of these Defendants. Plus, he has been deprived of retirement, promotion, reputation, etc.

Yick Wo v Hopkins, Id. attributed the discrimination of prohibiting one the right to work in a trade or profession "as being the essence of slavery itself." Id. at 226. Its true here also. This case involves a single employee (of many) who has been forced to engage in slave labor by the Defendants for purpose of retaliation, vindictiveness, or retribution because of his religious and political beliefs, speech, associations, petitions and other pursuits of legal

and contractual remedies. The 13th & 14th Amendments and the civil rights laws are suppose to protect one from such slavery.

The Court has said:

> "The majority recognized that "one of the disabilities of slavery, one of the indicia of its existence, was a lack of power to make or perform contracts." p 1209 Fn 78. Jones v Mayer Co., 392 US 409, 20 L Ed 2d 1189, 88 S Ct 2186 (1968)

Bush has not been able to enforce an individual employment contract from 1983 because of Defendents fraud and subterfuge. It was the subject of a state case Bush attempted to have the Supreme Court hear in 1995. (#95-843) 133 L Ed 2d 844, cert den; 134 L Ed 2d 572, reh den.) Plus, Bush has been unable to enforce the bargained contract for most of 20 years. Union Defendants have stood in the way by barring arbitration and plain old "nonaction" and even cooperation with Jones.

4. THE COURT SHOULD HEAR THIS CASE BECAUSE OF THE DEFENDANTS USED SANCTIONS TO HARASS THE PLAINTIFF AND THE DISTRICT COURT'S ABUSE OF THE POWER OF SANCTIONS AND THE INJUSTICE TO BUSH.

The District Court in Order #5 & 7 granted both Defendant groups' motions for sanctions against Bush. The District Court said:

> "There have been three motions for sanctions filed by the Defendants. Both sets of defendants filed motions for sanctions based upon the plaintiff filing his complaint. They allege that the complaint was filed for the purpose of harassment, and to increase the cost of litigation for defendants, noting that the issues raised had already been litigated." (App C, p a19)

The question is then whether a civil rights suit had been previously filed and decided. The only answer is NO! Never! The DCourt offers no evidence to the contrary.

The state actions, including one at least that was initially found in Bush's favor 4/1, were not civil rights actions. The closest was a civil contract case, but the merits were not decided because the prejudiced state judge would not consider fraud as a bar to the statute of limitations or other valid defenses. Furthermore, even though Bush had an appeal by right by law, the Court of Appeals

would not and did not hear the timely appeal, nor did any other court, including the US Supreme Court. ((#95-843) 133 L Ed 2d 844, cert den; 134 L Ed 2d 572, reh den.) Otherwise there were only state agency decisions, none of which had a review on the merits. Sanctions, if any, should have been ordered against Defendants, since they lied, and may have been had there been a fair, reasonable and unprejudiced judge.

Some members of the Court have expressed fear that punitive sanctions could be used against plaintiffs in order to chill or eliminate civil rights claims. This is such a case.

> "Creating a risk that the invocation of the judicial process may give rise to punitive sanctions simply because the litigant's claim is unmeritorious could only deter the legitimate exercise of the right to seek a peaceful redress of grievances through the judicial means. This Court, above all, should uphold the principal of open access." - Talamini v Allstate Ins. Co., 470 US 1067, 85 L Ed 125, 127-128, 105 S Ct 1824 (1985) (Memorandum Opinion) (Justice Stevens, with Brennan, Marshall, Blackmun concurring)

Obviously if whites can use sanctions to whip ligitimate white plaintiffs, they can do the same to others races, classes, etc. especailly those less able to defend.

But this case is different from Talamini. This is a fully meritorious claim. Yet Defendants here have used the sanction whip on this Plaintiff 3 times just at the DC level with the co-operation of the judge.

Defendants have not requested a specific sanction amount of attorney fees and costs yet. However, if this case is not reversed by the Supreme Court, it will likely be forth coming and prevail. Thus, at this point the actual damage in dollars to Bush from these motions is unknown. But that does not mean there will be none. Once this case is beyond the grasp of the Supreme Court, its a whole new game of retaliation and retribution. In fact, it could be substantial enough to cause bankruptcy, considering there are two law firms representing Defendants. Plaintiff in another civil rights case has already had sanctions in the amount of $11,000 unjustly imposed against him and his wife just for attempting to pursue a civil rights fraud case against local Zeeland government at just the

DC level, where government stole their property. (1:96-CV-622 (WD Mich))

Secondly, the court should consider all the time and effort Bush had to waste answering these frivolous sanctions motions.

In Business Guides v Chromatic Comm., 498 US 533, 540, 112 L Ed 2d 1140, 111 S Ct 922 (1991) sanctions in the amount of $13,000 were awarded against the plaintiff for being untruthful. But Bush has not been untruthful. (See also Clinton v Jones, news reports attorney fees over a $1 million on Paula Jones side.) Sanctions are not deserved.

The costs to Bush and his family have already been tremendous and are impossible to recover, - 20 years of lost independance, lost life, opportunities, work, plus all the necessary, but time wasting litigation, spending money on it, and not a penny reimbursed, etc.

For these important reasons alone this case should be heard.

5. THE COURT SHOULD HEAR THIS CASE BECAUSE THE DISTRICT COURT SANCTIONED BUSH FOR FILING A DEFAULT MOTION WHEN UNION DEFENDANTS DID NOT FILE AN ANSWER AS REQUIRED BY THE RULES.

After service by waiver, Bush filed a motion for default judgment when Union Defendants did not file a timely answer. The District Court ruled they did not have to file an answer because they filed a motion to dismiss and denied the default motion. (App C, p a5 at II) Union Defendants ultimately filed an answer, but only after Bush filed his motion for default judgment. The Union filed a motion for sanctions on Bush for filing a default motion. (App C, p a19)

The District Court, however, contends the Union did not have to file an answer or that their motion to dismiss was effectively an answer. The Court contends Bush's default motion is "entirely groundless" and "it was so clearly meritless." (App C, p a21) Bush disagrees.

Plaintiff is not aware of any Supreme Court decision on the question of answer to the complaint. However, the FRCP are specific as to an answer and the Supreme Court has some say in the rules.

"Rule 7 (a) Pleadings. There shall be a complaint and an answer;"

"Rule 12(a) A defendant shall serve his answer within 20 days after the service of summons and complaint upon him . . "

In addition, the Court has said:

"We give the Federal Rules of Civil Procedure their plain meaning." Pavelic & LeFlore v Marvel Entertainment Group, 493 US 120, 123, 107 L Ed 2d 438, 110 S Ct 456 (1989) As with a statute, our inquiry is complete if we find the text of the Rule to be clear and unambiguous." - Business Guides v Chromatic Comm., 498 US 533, 540, 112 L Ed 2d 1140, 111 S Ct 922 (1991)

The word "shall [is] significant . . mandatory language." It is use of "language of an unmistakably mandatory character." Fn 4, p 310. - Board of Pardons v Allen, 482 US 369, 96 L Ed 2d 303, 107 S Ct 2415 (1987) Plus, both the summons and waiver of summons forms also require an answer. Therefore, the Union Defendants had fair warning and no excuse for not filing an answer. Furthermore, they have always been represented by attorneys. The Union can file huge motions to dismiss and multiple motions for sanctions, why can they not file a timely answer?

Due process and equal protection also require a timely answer of Defendants, just as much as a timely appeal is required of Bush after losing multiple times.

6. THE COURT SHOULD ACCEPT THIS CASE BECAUSE BUSH HAS BEEN SANCTIONED UNJUSTLY FROM FILING ANY FURTHER SUITS AGAINST THESE DEFENDANTS.

Furthermore, the court should accept this case because even if substantial infringement of Bush's work life continues, which it has and is likely to, the District Court has all but barred (sanctioned) Bush from filing any other civil rights complaints against these Defendants as of February, 1997, even though some of these defendants or their seccessors would be the ones who would, according to their past history, discriminate against him further. App C, p a22) Plus, it means that Bush could be sanctioned again or worse, held in contempt, for telling the truth about these

Defendants or his history at Zeeland Schools in any other lawsuit. That is unreasonable.

7. WOULD THE COURT CONSIDER THIS CASE WHERE THERE IS ABUSE OF THE RULES AS A MEANS OF HARASSMENT OF A PRO SE PLAINTIFF BY DEFENDANTS ATTORNEYS AND THUS WHETHER THERE IS A VIOLATION OF THE COURT'S CODE OF CONDUCT?

It has been said that the rules have "not infrequently [been] exploited to the disadvantage of justice." Herbert v Lando, 441 US 153, 179 (1979) (Powell, J., concurring) That is the case where. Defendants have used numerious motions to dismiss, summary judgment and sanctions to harass Bush at the early stages of the litigation.

8. THE COURT SHOULD HEAR THIS CASE BECAUSE: A.) IT TRULY REPRESENTS THE MANIFEST INJUSTICE SUFFERED BY PRO SE LITIGANTS; B.) IT DEMONSTATES THE INJUSTICE THAT JUDGES CAN PROVIDE BY MEANS OF DISMISSAL AND SUMMARY JUDGMENT; C.) IT DEMONSTRATES CLEARLY THE VIOLATIONS OF THE 7TH AMENDMENT.

First, consider the factual identity of this case in comparison with Memphis Comm Sch v Stachura, 477 US 299, 91 L Ed 2d 249, 106 S Ct 2537 (1986) But then contrast the legal outcome disparity.

Stachura was A) a Michigan tenured teacher, B) suspended with pay, C) who sues school board, employees, etc. under 42 USC sec 1983, D) alleging violation of 1st & 14th Amendment rights etc. Id. See similiar facts in complaint in this case. a) Bush is Michigan tenured teacher. (App C, p a4) b) Bush sues school board, employees. Id. c) Bush suspended with pay. (App C, p a11) d) Bush alleged violations of 1st and 14th Amendments. (App C, p a16) Why the vast difference in outcomes?

The identity virtually ends there because in Stachura the case was A) tried by a jury, B) won, and C) was awarded damages all before it ever arrived at the Supreme Court and these facts were not the center of the dispute. Where is Bush's jury trial?

It is obvious that, if "justice must satisfy the appearance of justice" p 14, Offutt v US, 348 US 11, 75 S Ct 11, (1954), the

District Court's decision in this case doesn't provide any measure of "justice" whatever.

A. Is The Injustice And Unequal Outcomes Of This Case Due To The Form Of Representation?

First, it is safe to say Stachura (the teacher) was represented by counsel, even though the Supreme Court case does not say so. Apparently then, there is prejudice against pro se litigants by some judges and that is why Bush's case never got to the jury.

It should come as no surprise that some citizens of this country cannot afford an attorney or, in some cases, can not find one to represent them. Hensley v Eckerhart, 461 US 424, 76 L Ed 2d 40, 103 S Ct 1933 (1983) Consider recent news reports of FBI whisleblower, Frederic Whitehurst. His attorney said he has been through 10 years of hell. (He can now join the civil rights victims club.) The news reported that a settlement agreement will pay his attorneys $250,000. (AP, 2-27-98) How many litigants can afford that? Most pro se litigants cannot. Many would have to work 10 years at $25,000 per year ($10 hr), live on nothing, and pay no taxes whatsoever to make or have that much money to spend on attorney fees - a virtual impossibility.

The Petitioner can testify to the fact that not many attorneys want civil rights cases - virtually none. Apparently, they are too hard to win and take to much time and money to fight well-heeled oppressive civil rights defendants. Plus, there is the double-edge sword factor. If the plaintiff wins, attorney fees can be awarded. But if you lose, attorney fees can be demanded by the well-heeled defendants under 42 USC sec 1988. (Bush knows from experience. See Bush v Zeeland BPW, 1:96-CV-622 (WD Mich) over $11,000 attorney fees and costs awarded against Mr. & Mrs. Bush as result of unjust loss on summary judgment in case where government took property and rights by fraud and judge ruled whites have no civil rights.) So, an attorney has to be 100% certain of winning before taking a case. Thus, many valid civil rights cases die for want of counsel.

B. Dismissal And Summary Judgment Are Handy Andy Tools Of Injustice For Guilty Defendants.

This case represents full use of the tools of injustice used by judges to clear the docket of the less able plaintiffs' cases. In the first place, who doubts a federal judge's "fact finding" in a decision to dismiss or summary judgment decision? Certainly not the Defendants. Maybe the Courts of Appeals. (US v Bencs, 28 F.3d 555, 558 (6th Cir 1994)(review facts for clear error.) What about hidden error? Or not looking for facts of the complaint that support the charges?

It seems quite obvious that with only the identity of facts in this case with that in Memphis Comm Sch v Stachura, supra, that no dismissal or summary judgment decision should ever have been made in favor of Defendants in this case. But it was. Why?

It, at least, creates a suspicion of the motives of the judge who made the ruling. The question is whether or not that judge is biased against pro se litigants in violation of 28 USC sec 1654 (App G, p a28) and Farretta v California, 422 US 806, 831, 45 L Ed2d 562, 95 S Ct 2525 (1975). It is obvious to Petitioner he is. Petitioner has dealt with many judges prejudiced against pro se litigants. They are not just. Further, prejudice can be shown in other ways. It has been frequently held that motions to dismiss should be viewed with disfavor in several circuits. Rennie & Laughlin, Inc. v Chrysler Corp. (1957, CA9 Cal) 242 F2d 208; Dann v Studebaker-Packard Corp. (1961, CA6 Mich) 288 F2d 201; Arthur H. Richland Co. v Harper, (1962, CA5 Fla) 302 F2d 324; Shull v Pilot Life Ins. Co. (1963, CA5 Fla) 313 F2d 445.

Some courts have been cautious in terminating litigation before plaintiff has his day in court. Gainey v Brotherhood of R. & S.S. Clerks, etc. (1959, DC Pa) 177 F Supp 421, affd (CA3 Pa) 275 F2d 342, cert den 363 US 811; Vogels[illegible] v National Screen Service Corp. (1962, ED Pa 204 F Supp 591, affd (CA3 Pa) 310 F2d 738, cert den 374 US 840 reh den 375 US 873.

Some district courts have been (note: past tense) hesitant to grant motions to dismiss. Buchler v US, (1974, ED Cal) 384 F Supp 709. Mastandrea v Gurrentz International Corp. (1974, WD Pa) 65 FRD 52; St. Marie & Son, Inc. v Hartz Mountain Corp. (1976, DC Minn) 414 F Supp 71. Some felt discovery was important before dismissing. Re: Equity Funding Corp. of America Secur. Ligation (1976, CD Cal) 416 F Supp 161.

Some Courts have even been liberal with pro se pleadings. Campbell v Beto, (1972, CA5 Tex) 460 F2d 765; Bruce v Wade, (1976, CA5 Tex) 537 F2d 850; Bienvenu v Beauregard Parish Police Jury (1983, CA5 La) 705 F2d 1457; Rogers v Westbrook, (1973, Ed Mo) 362 F Supp 353; Holloway v Carey, (1979, SD NY) 482 F Supp 551; King v Wells, (1982, ED Mich) 94 FRD 675. (Some say they are, but aren't - this one.)

But then there are others who do not agree and have a strict and narrow standard for pro se plaintiffs that always favors government defendants for some strange reason. Bush v Zeeland Bd Ed, et al, (App C); Bush v Zeeland BPW, (6th Cir., #97-1739), 1:96-CV-622, WD Mich; Bush v Donkersloot, et al., 1:97-CV-51 (W.D.Mich); Bush v Rooks, et al, #1:97-CV-541, (WD Mich) (awaiting a decision by Judge Enslen on motion to dismiss allegedly for improper service, where defendants deliberately evaded acknowledgement of service via waiver method, then moved for dismissal claiming improper service and never filed answer.)

In the scheme of things, dismissal without a valid legal basis becomes a precedent for other dismissals without lawful basis. Thus the law becomes poluted. It is not reliable. These unjust precedents become an unclimbable Mt. Everest. A substantial bar to civil rights and cause of anger.

C. Judicial Decisions Disposing Of Cases Where Jury Trials Are Requested Violate The 7th Amendment and 28 USC sec 1981 (a).

It is evident from the above identity facts with Memphis Comm Sch v Stachura, supra, that a jury trial was a right in this case as it was there.

Granted there are more issues raised in this case. But this case has a history dating at least from 1978. In Stachura the First Amendment offense was open, visible, clear and all at once. Here, everything has been the opposite, hidden, secret and concealed, deliberately and deceptively for unjust reasons. Plus there is conspirarcy. Conspiracy to keep Bush from working, teaching, earning an income in a professional capacity. Note: conspiracy cases are not to be dismissed lightly. Adickes v Kress & Co, 398 US 144, 26 L Ed 2d 142, 90 S Ct 1598 (1970)

Because Bush first attempted resolution through state administrative agencies, is that reason enough to deny a jury trial?

No! The 7th Amendment has authority and validity that exceeds state administrative agencies. They do not provide jury trials. Often you cannot get a hearing. Bush has been denied 2 of 3 requests to date. One having to do with suspension with pay. The rights protected by the Constitution exceed rights protected by administrative agencies.

> "Our concern is with the fair adminstration of justice." p 17 Offutt v US, 348 US 11, 75 S Ct 11, (1954)

On that basis there exists plenty of reasons here to accept this case for full review and ask why no jury trial?

9. THE COURT SHOULD HEAR THIS CASE BECAUSE IT IS CLEAR THAT UNIONS HAVE A FIDUCIARY DUTY TO BE FAIR; EQUAL AND NOT DISCRIMINATORY TOWARD REPRESENTEES WHO HAVE EXERCISED THE RIGHT TO DISASSOCIATE FROM THE UNION FOR POLITICAL, RELIGIOUS &/OR OTHER REASONS.

In Conley v Gibson 355 US 41, 2 L Ed 2d 80, 78 S Ct 99 (1957) the Court made clear that an exclusive bargaining agent has a duty by law to represent all employees with an equal and just hand and to not discriminate on basis of race. The same principles also apply to forbid discrimination as to free speech, associations, religious and/or political beliefs. This case is about a union who does discriminate and does bar a representee from the benefits of the contract and has even engaged in subterfuge and conspiracy with the employer and/or agents to keep the Petitioner out of a job.

These practices demonstrated by this union in this case are in agreement with long stated conspiratorial goals of the Union against some teachers. The Union has said it will control who enters, who stays and who leaves the public school teaching professsion. NEA, Trojan Horse in American Education, p 211, Sam Blumenfeld, 1984. They certainly have in Bush's case.

The Court has recently said that:

> "Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation, . . " Dennis v Higgins, 498 US 439, 112 L Ed 2d 969, 980, 111 S Ct 865 (1991)

The intent here is to include every worker, professional or common labor and declare that they have the "certainty" of "free access" to the market for their labor. It is the right to work. A 9th Amendment right. (It cannot be said that one does not have a right to work anymore than it may be said that one does not have a right to go into business in this country at least. See Yick Wo, supra.)

Forcing a worker from the his profession without just cause violates the 13th and the 14th Amendments in this case.

10. THIS CASE SHOULD BE HEARD BECAUSE THE LOWER COURT DECISION IS AGAINST FIRST AMENDMENT PROTECTIONS.

In Rutan v Republican Party of Illinois, 497 US 62, 111 L Ed 2d 52, 110 S Ct 2729 (1990) the Court held that government employees are protected by the First Amendment in their political choices, associations and speech against retaliation by authority figures of the opposite views. They are protected against direct and indirect retaliation.

This is such a case where such protection has been sought but denied by the District Court, as in Rutan. Basically a case of indirect infringement. In Rutan, the Court held that dismissal of such a complaint under Rule 12(b)(6) was improper. It should do the same here, after hearing the case.

There are many aspects of the First Amendment here. petition, religion, free speech, union association, political association. The DC acknowledges First Amendment claims. petition, speech, association, etc. even retaliation are found in the complaint. It does not consider them fully, however. Petitioner does not agree that these are his only claims. But, since the DC recogized these "possibilities" its a place to start. He says there are two possible retaliation theories and that violates the law.(See at App C, p a16)

It is apparent that a statute restricting First Amendment activity " `is repugnant to the guaranty of liberty contained in the Fourteenth Amendment . . ' " - Edwards v South Carolina, 372 US 229, 238, 9 L ed 2d 697, 83 S Ct 680 (1963) (quoting Chief Justice Hughes in Stromberg v California, 283 US 359, 369, (1931)) It should therefore be just as "repugnant" to retaliate, discipline, or discriminate, in fact or effect, for First Amendment activity. The

Court does not seriously expect the Defendants to admit to it, does it? The inferences should be jury questions after viewing all the circumstancial evidence.

It cannot be said that "First Amendment freedoms" are "priceless," Edwards, US at 239, when one loses his employment just for exercising them and then can find no forum to protect him. It is a cruel, costly, damaging illusion. Bush knows from experience. Furthermore, retaliation for First Amendment activity is not uncommon. Cantrell v Connecticut, 310 US 296, 84 L Ed 1213 (1939); Rutan, Id.

CONCLUSION

This case is unique. But the facts are not altogether unheard of. One person who lives in Zeeland recently wrote the local paper that he has been discriminated against for his speech with threats, job loss and even attempts to cause him to move on to someplace else. The Bush's have been told by a government official to move on also. White on white discrimination is not unique or new. Is there a remedy?

Here on appeal the Court can decide important questions of statute and rule interpretation, plus decide the clerk's role. The facts and underlying district court decision presents good questions for review. Is an answer necessary? Abuse of sanctions. The conflict between dismissal, summary judgment by a judge and jury trial. Did the facts and law of this case warrant a jury trial like Stachura, Id. instead of dismissal? Are Bush's free speech rights protected like Rutan, Id.? Does Bush have employment due process rights like Loudermill, Id.? Will "one man" be prevented from controlling and enslaving Bush like in Yick Wo, Id.? Is the 13th Amendment relevant today? Will Justice prevail? Bush hopes and prays to God it will be so for the sake of the nation.

Remember Bush has had his and his families lives, hopes, and dreams put on hold for 20 years by "one man" with several accomplices. Would you want your civil rights case to go forward if you were in his shoes?

March 31, 1998

Respectfully submitted,
Gerald D. Bush

Appendix A

No. 97-1576

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GERALD D. BUSH,

Plaintiff-Appellant,

V.

ZEELAND BOARD OF EDUCATION; MICHAEL Z. JONES; KENNETH HARPER, JAY KLINGE; ZEELAND EDUCATION ASSOCIATION; WILLIAM ROBERTSON; JAMES GALER, ROBERT LARSEN; MICHIGAN EDUCATION ASSOCIATION MARY ANN ZIMMERMAN, sued in their personal and official capacities,

Defendants-Appellees.

Filed

Nov. 3, 1997

LEONARD GREEN, *Clerk*

Before: KRUPANSKY, RYAN, and BATCHELDER, Circuit Judges.

This matter is before the court upon consideration of the appellant's response to this court's order directing him to show cause why his appeal should not be dismissed for lack of jurisdiction on the basis of a late notice of appeal. Appellant responded challenging the authority of the clerk to enter an order questioning the jurisdiction of the court. Appellant argued that questions of jurisdiction should be addressed by a panel of this court and that he should be provided an ex-parte hearing to orally argue the jurisdictional matter

It appears from the documents before the court that the district court's judgment was entered February 28, 1997. Appellant filed a motion in the district court on March 28, 1997 seeking to have (pg 2) the district court clarify the decision by specifying at the end of each paragraph the rule upon which the judge relied. Appellant also sought an extension of time for filing a notice of appeal because he had other pressing legal matters, and he wished to wait until the court specified the rules upon which it relied before he appealed. This motion was not a time-tolling motion. *See* Fed. R. App. P. 4(a)(4). However, it was filed within the period provided by Fed. R. App. P. 4(a)(5) for seeking extensions of time. By order filed on April 16 and entered April 17, the district court denied the motion for clarification and granted the appellant an extension of time for 30 days from service of the order in which to file the notice of appeal. Fed. R. App. P. 4(a)(5) provides that extensions may not exceed 30 days past the prescribed appeal period or IO days from the date of entry of the order granting; the motion, whichever occurs later. Because 30 days past the prescribed period was April 30 and 10 days from the entry of the order

granting the extension of time was April 28, the maximum amount of time the district court was authorized to give was until April 30, 1997. The notice of appeal filed on May 14, 1997 was late. *See* Fed. R. App. P. 4(a) and 26(a).

The failure of appellant to timely file a notice of appeal deprives an appellate court of jurisdiction. Compliance with Fed. R. App. P. 4(a) is a mandatory and jurisdictional prerequisite which this court can neither waive nor extend. *Baker v. Raulie*, 879 F.2d 1396, 1398 (6th Cir. 1989) (per curiam). Fed. R. App. P. 26(b) specifically provides that this court cannot enlarge the time for filing a notice of appeal.

Accordingly, it is ordered that the appeal is dismissed for lack of jurisdiction.

ENTERED BY ORDER OF THE COURT
s/ Leonard Green
Clerk

Appendix B
No. 97-1576

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GERALD D. BUSH
Plaintiff-Appellant,

Filed
June 6, 1997
Leonard Green, Clerk

V.

ORDER

ZEELAND BOARD OF EDUCATIOIN; MICHAEL Z. JONES; KENNETH HARPER; JAY KLINGE; ZEELAND EDUCATION ASSOCIATION; WILLIAM ROBERTSON; JAMES GALER; ROBERT LARSEN; MICHIGAN EDUCATION ASSOCIATION; MARY ANN ZIMMERMAN, sued in their personal and official capacities,

Defendants-Appellees.

Appellant is appealing from the judgment dismissing the civil rights action.

It appears from the documents before the court that the judgment was entered February 28, 1997. Appellant sought an extension of time on March 28, 1997. An order filed April 16, 1997 granted an extension of 30 days from the date of the order. Fed. R. App. P. 4(a)(5) provides for a 30 day extension from the prescribed appeal period or 10 days from the entry of the order granting an extension of time. The notice of appeal filed on May 14, 1997 was filed 44 days after the expiration of the original appeal period and 28 days after the court's order ruling on the extension of time. The notice of appeal was late. *See* Fed. R. App. P. 4(a) and 26(a).

It is therefore ordered that appellant show cause in writing not later than twenty-one days from the file date of this order why the appeal should not be dismissed for lack of jurisdiction.

It is further ordered that the briefing schedule be held in abeyance pending the resolution of the question of jurisdiction.

ENTERED PURSUANT TO RULE 8(b),
RULES OF THE SIXTH CIRCUIT
Leonard Green, Clerk
s/Leonard Green

Appendix C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

GERALD D. BUSH,
Plaintiff,
v
ZEELAND BOARD OF EDUCATION, MICHAEL Z. JONES; KENNETH HARPER; JAY KLINGE;ZEELAND EDUCATION ASSOCIATION; WILLIAM ROBERTSON;JAMES GALER;ROBERT LARSEN;MICHIGAN EDUCATION ASSOCIATION; and MARY ANN ZIMMERMAN, All defendants are sued in their personal and official capacities;
Defendants.

File No. 1:96 CV 420
HON. RICHARD ALAN ENSLEN
(filed Feb. 28, 1998)

OPINION

This matter is before the Court on six motions, including defendants' motions to dismiss and for summary judgment, plaintiffs motion for default judgment, and defendants' motions for sanctions.

1. **Facts**

Plaintiff in this case, Gerald D. Bush, is a former teacher for the Zeeland Public School District. Defendants can be put into two distinct groups, the first consisting of plaintiffs employer, the Zeeland Public Schools Board of Education, and several of its (pg 1) current or past employees, Michael Jones, past Principal of Zeeland High School and full-time Personnel Manager for Zeeland Public Schools; Kenneth Harper, Superintendent of Zeeland Public Schools from 1979 to 1993; and Jay Klinge, Assistant Principal of Zeeland High School ("the employer defendants"). The second group includes the collective bargaining agent for the teachers employed by the School District, the Zeeland Education Association, its state-wide affiliate, the Michigan Education Association, and several of its representatives, William Robertson, James Galer, Robert Larsen, and Mary Ann Zimmerman ("the union defendants").

Plaintiff was an active teacher from 1969 through August of 1993, and became tenured in about 1971. Plaintiff withdrew from the teachers' union in 1976, and alleges that, as a result, he began experiencing differential treatment in 1978. Plaintiffs complaint alleges that the defendants have violated his rights as protected by the First, Fourth, Fifth, Ninth, Thirteenth, and Fourteenth Amendments to the United

States' Constitution, and that the complaint is brought pursuant to 42 U.S.C. §§ 1981, 1983, 1985, 1988, and 2000 et seq. The plaintiff also alleges causes of action under "the statutes, ordinances, regulations, customs and usages of the State of Michigan," citing specifically to the Michigan Law Public Act 4 of 1937, M.C.L. §38.71 et seq. and the Michigan Tenure Law, M.C.L. § 38.101 et seq. Additional factual allegations contained in the complaint are set forth below where relevant.

Currently before the Court are seven pending motions: the union defendants' motion to dismiss plaintiffs complaint, filed September 17, 1996; the employer defendants' motion for judgment on the pleadings and/or summary judgment, filed on (pg 2) September 27, 1996; plaintiffs motion for default judgment against union defendants, filed November 4, 1996; the employer defendants' motion for sanctions, filed November 8, 1996; the union defendants' motion for judgment on the pleadings and/or summary judgment, filed November 26, 1996; the union defendants' motion for sanctions with respect to plaintiffs default judgment motion, filed December 3, 1996; and the union defendants' motion for sanctions, filed January 6, 1997. Plaintiffs complaint will be liberally construed for the purpose of deciding these motions, as pleadings of pro se litigants are to be held to less stringent standards than those filed by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972).

II. **Motion for Default**

Plaintiff claims that the union defendants failed to file an answer within 60 days after the date when the request for waiver was sent as required by Rule 12(a)(B) of the Federal Rules of Civil Procedure. However, Rule 12(a)(4)(A) extends the time in which the defendants must file an answer, because they filed a motion to dismiss pursuant to Rule 12(b) within 60 days. The waiver of service was executed on August 13, 1996, and defendants filed a motion to dismiss on September 17, 1996. Therefore, plaintiff is not entitled to a default judgment, and his motion is denied. Fed. R. Civ. P. 55(a), (b)(2).

III. **Motions to Dismiss and for Summary Judgment**

Both sets of defendants filed motions to dismiss pursuant to Rule 12(b)(6), and in the alternative motions for summary judgment pursuant to Rule 56(b). With respect to some of plaintiffs claims, it is not necessary to consider matters outside the pleading to determine that he has failed to state a claim upon which relief could be granted. (pg 3) Those claims will be dismissed based solely upon the pleadings. As to those claims for which such dismissal was not possible, the Court has considered the briefs and supporting documentation filed by each party to determine whether summary judgment should be granted.

A. Standard for Dismissal Under Rule 12(b)(6)

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal of a complaint that fails to state a claim upon which relief can be granted. In deciding a 12(b)(6) motion, the court must determine whether plaintiffs complaint sets forth sufficient allegations to establish a claim for relief. The court must accept all allegations in the complaint as true and construe them in the light most favorable to plaintiff. Zinermon v. Burch, 494 U.S. 113, 117-18 (1990); In re Delorean Motor Co., 991 F.2d 1236, 1240 (6th Cir. 1993).

The complaint must set forth enough information to outline the elements of a claim or to permit inferences to be drawn that these elements exist. In re Delorean, 991 F.2d at 1240. The court cannot dismiss plaintiffs complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of its claim which would entitle it to relief. Neitzke v. Williams, 490 U.S. 319, 327 (1989); Lee v. Western Reserve Psychiatric Habilitation Center, 747 F.2d 1062, 1065 (6th Cir. 1984).

B. Standard for Summary Judgment Pursuant to Rule 56

"Federal Rule of Civil Procedure 56(c) provides that summary judgment is proper 'if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that (pg 4) the moving party is entitled to judgment as a matter of law.'" City Management Corp. V. U.S. Chemical Co., Inc., 43 F.3d 244, 250 (6th Cir. 1994).

"A party seeking summary judgment bears the initial burdens of specifying the basis upon which it contends judgment should be granted and of identifying that portion of the record which, in its opinion, demonstrates the absence of a genuine issue of material fact." Pierce v. Commonwealth Life Ins.Co., 40 F.3d 796, 800 (6th Cir. 1994) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). "Once this initial burden is met, it becomes the burden of the non-moving party to come forward with specific facts, supported by the evidence in the record, upon which a reasonable jury could find there to be a genuine fact issue for trial." Bill Call Ford, Inc. v. Ford Motor Co., 48 F.3d 201, 205 (6th Cir. 1995) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Summary judgment against the non-movant is appropriate where the non-movant, after adequate time for discovery on material matters at issue, fails to make a showing sufficient to establish the existence of a material disputed fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

"'[C]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences are jury functions, not those of a judge. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in the [nonmovant's] favor.'" Id. (quoting Anderson, 477 U.S. at 255). The factual record presented must be interpreted in a light most favorable to the non-movant. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). This Court "cannot resolve issues of fact, but is empowered to determine only whether there are issues in dispute to be (pg 5) decided in a trial on the merits." Gutierrez v. Lynch, 826 F.2d 1534, 1536 (6th Cir. 1987); In re Atlas Concrete Pipe, Inc., 668 F.2d 905, 908 (6th Cir. 1982).

C. Section 1981 Claim

Defendants argue that plaintiffs claim under 42 U.S.C. § 1981 should be dismissed because that section only provides a cause of action where a defendant discriminates on the basis of race or ethnicity. Defendants' interpretation of the statute is correct. Saint Francis College v. Al-Khazraji, 481 U.S. 604, 613 (1987) (Through § 1981, "Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics.") Nowhere in the complaint does plaintiff make any allegation as to his race or ethnicity being a factor in the harm he is alleging that defendants inflicted upon him. In fact, it is apparent from statements made in plaintiffs response that plaintiff is white. For these reasons, plaintiffs section 1981 claim must be dismissed as to all defendants.

D. Section 1983 Claim

1. Union Defendants

Section 1983 creates a cause of action for civil rights that are violated under color of state law. The union defendants argue that plaintiff can not state a § 1983 claim against them because he can not meet the "under color of law" requirement. That requirement is interpreted to be the same as the state action requirement under the Fourteenth Amendment. Rendell-Baker v. Kohn, 457 U.S. 830, 838 (1982). The question that must be answered in determining whether a person or entity may be sued (pg 6) under § 1983 is whether that person's or entity's actions that are alleged to violate a federal right are "fairly attributable to the State." Id (quoting Lugar v. Edmonson Oil Co., 457 U.S. 922, 937 (1982)).

Although plaintiff does not dispute that the union defendants are private actors, he argues that their actions should be considered actions of the state, because the union is the exclusive bargaining agent for Zeeland public school teacher, and the duty of the union to fairly

represent all employees is found in state law. The Supreme Court has held that even where private actors are almost entirely funded by the state, are regulated by state law, and perform a public function, their actions will not be considered state action unless the state has "exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State." Rendell-Baker, 457 U.S. at 840-42 (quoting Blum v. Yaretsky, 457 U.S. 991, 1003 (1982)).

Here, the plaintiff has generally alleged that the union defendants either did not represent him in his efforts to grieve his employers' actions under the applicable collective bargaining agreement, or their representation when provided was somehow defective. The plaintiff has not alleged that the state was involved in any way in the decisions of the union and its representatives to not represent plaintiff in the grievance process or in the quality of representation with which the union provided plaintiff. Accordingly, I find that plaintiffs complaint does not state a § 1983 claim against the union defendants because he can not show that those defendants acted under color of state law. See, Leahy v. Bd. of Trustees of Community College Distr. No. 508, 912 F.2d (pg 7) 917 (7th Cir. 1990) (holding that §1983 claim could not be stated against union because state action requirement could not be met).

2. Employer Defendants

a)Zeeland Board of Education

To impose liability on a local governmental entity, such as the Zeeland Board of Education, for failing to act to preserve constitutional rights, a section 1983 plaintiff must establish: 1) that he possessed a constitutional right of which he was deprived; 2) that the entity had a policy; 3) that this policy "amounts to deliberate indifference" to the plaintiff's constitutional right; and 4) that the policy is the "moving force behind the constitutional violation." City of Canton v. Harris, 489 U.S. 378, 389-91 (1989). In Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 691 (1978), the Supreme Court held that Congress did not intend governmental entities to be liable for constitutional violations under 42 U.S.C. § 1983 "unless action pursuant to official municipal policy of some nature caused a constitutional tort." In other words, official policy, not the acts of individual employees or agents, must be responsible for the deprivation of constitutional rights. Id. at 690.

The Monell court held that official policy may be evidenced by a government's "lawmakers or by those whose edicts or acts may fairly be said to represent official policy." Id. at 694. However, "[p]rolof of a single incident of unconstitutional activity is not sufficient to impose liability under Monell, unless proof of the incident includes proof that it

was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker. Otherwise, the existence of the unconstitutional (pg 8) policy, and its origin, must be separately proved." Oklahoma City v. Tuttle, 471 U.S. 808, 823-24 (1985).

As a threshold matter, plaintiff must demonstrate a practice or custom on the part of the governmental entity with respect to the alleged actions of the individuals named. Barnier v. Szentmiklosi, 810 F.2d 594, 599 (6th Cir. 1987). An entity cannot be held liable under section 1983 on a respondeat superior theory. Id. (citing Monell, 436 U.S. at 658).

Plaintiff has failed to allege the existence of a policy or custom, or a causal connection between such a policy and the alleged constitutional injuries. Furthermore, the law is clear that the Board of Education can not be held liable for the actions of its individual officers. Therefore, plaintiff's § 1983 claim against the Zeeland Board of Education is dismissed for failure to state a claim.

b) Individual Employer Defendants

Plaintiff also named in his complaint three employees of the Zeeland Public School System: Michael Jones, Kenneth Harper, and Jay Klinge. The complaint states that these defendants are sued in their personal and official capacities. Suits against individuals in their official capacities are another way of pleading an action against the governmental entity of which the individual is an agent. Kentucky v. Graham, 473 U.S. 159, 165-66 (1985). Therefore, the pleading requirements to state a claim against the individuals in their official capacities are the same as those for stating a claim against a governmental entity, discussed above. Id. As plaintiff has failed to state a claim with (pg 9) respect to liability of the Zeeland Board of Education, he has also failed to state a claim against the individual defendants in their official capacities.

To establish a personal liability action under § 1983, the plaintiff must show that the official, acting under color of state law, caused a deprivation of a federal right. Id. Because the complaint, on its face, alleges that the individual employer defendants violated the plaintiff's constitutional rights, the Court will look beyond the pleading and consider whether summary judgment should be granted on the § 1983 claims against the individual employer defendants.

i. Collateral Estoppel

Defendants argue that plaintiff's claims are barred by the doctrine of collateral estoppel. Plaintiff argues that his claims are not barred, because he never had a "full and fair" hearing on these issues.

Where a party raises an issue in a § 1983 action that was previously litigated in a state-court proceeding must be given the same preclusive effect that would be given in the courts of the state where the judgment was rendered, pursuant to the full faith and credit doctrine. Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 82-83 (1984). The principle applies where the state court has reviewed and upheld the decision of a state agency. Kremer v. Chemical Constr. Co[p., 456 U.S. 461 (1982). Under Michigan law, the doctrine of collateral estoppel, or issue preclusion, "holds that a judgment is 'conclusive between the parties ... as to questions actually litigated and determined by the judgment.'" Warda v. C.I.R.,, 15 F.3d 533, 537 (6th Cir. 1994) (quoting Howell v. Vito's Trucking & Excavating Co., 386 Mich. 37, 191 N.W.2d 313, 315 (1971)). A previously (pg 10) litigated issue can not be relitigated in a subsequent, different cause of action. Kaufman v. BDO Seidman, 984 F.2d 182 (6th Cir. 1993) (quoting People v. Gates, 434 Mich. 146, 154, 452 N.W.2d 627, 630 (1990)). Michigan law also precludes, under res judicata, or claim preclusion, the consideration of a claim that could have been raised in a prior action. Reithmiller v. Blue Cross & Blue Shield of Michigan, 824 F.2d 510, 511 (6th Cir. 1987). See also, Kremer, 456 U.S. at 465 n.4 (where claim was barred by res judicata in state court, it can not be considered in federal court pursuant to full faith and credit).

ii. Allegations

At issue with respect to these three defendants is whether their actions violated any federal rights. Against all three defendants, plaintiff has alleged: they terminated plaintiff at the end of the 1980-81 school year, and the reasons they gave, economic conditions and low course enrollment, were a subterfuge, and the real reason was because plaintiff was not a union member (ref. Paragraphs 29-31are to the complaint.)); that they hired someone else to fill the 3/5 position for the 1981-82 school year that was remaining after the cut backs after plaintiff was offered the position and refused it (32,33,36); they increased the hours of plaintiff's old position for the 1982-83 school year, and then again for the 1983-84 school year, but did not recall plaintiff either time (38,40); all three defendants harassed him over the years (but plaintiff does not provide any details as to what he means by harassment, except as to defendant Jones, which is discussed, infra) (41); they laid off plaintiff at the end of the 1983-84 school year, and did not offer plaintiff any alternative position, again stating the reason was declining enrollment (although plaintiff (pg 11) does not state it, presumably he is alleging that the reason for this lay off was also false) (46); there were open full-time positions at the end of the 1985-86 and 1986-87 school

year, and plaintiff was not recalled (plaintiff states specifically that he did not desire the position for the 1986-87 year) (48,51); they did not rehire plaintiff at the end of the 1993-94 school year during which, by plaintiff's own account, he called in sick at the start of the year and never reported to work the entire year (105); they quit offering auto mechanics, which was plaintiff's teaching specialty, so that plaintiff would be precluded from ever teaching in his field (106).

As to defendant Jones specifically, plaintiff alleges that he: subjected plaintiff to "differential treatment" in the form of placing plaintiff on "plans of assistance" in which plaintiff would have to prepare lesson plans and attend meetings that other teachers were not required to attend, during the years 1978-1981, and in October 1992, December 1992, January 1993, and March 1993 (23,24,25,66,73,75,78,88); told plaintiff, in the spring of 1980, that if plaintiff did not quit he would be terminated at the end of the 1980-81 school year (26); assigned plaintiff to industrial art classes for the 1990-91 school year (62); assigned plaintiff to industrial art classes and to four preparations for the 1991-92 school year, allegedly in violation of the contract, "with ulterior motives" (64); "critically and unjustly" evaluated plaintiff in September of 1992 (71); suspended plaintiff, without due process, for four days in February 1993 for insubordination and not following the plan of assistance (84); reassigned plaintiff to a full-time position and assigned him four preparations for the 1993-94 school year (89); suspended plaintiff, (pg 12) beginning in May 1993 and continuing until the end of the school year in June, for three hours per day (90); told plaintiff, at a meeting on August 30, 1993, that plaintiff would be closely observed and evaluated during the 1993-94 school year (97).

As to defendant Klinge specifically, the only statement is that plaintiff spoke with him in February of 1985, and that the next day the school at which plaintiff was substituting called to cancel the days plaintiff had been scheduled to substitute and told him they would not be calling him anymore (47). Although plaintiff implies that this was somehow Klinge's fault, he does not provide any facts to support that implication.

With respect to defendant Harper specifically, plaintiff alleges that he would not meet with plaintiff in the spring of 1981 (28), and that in August of 1983 Harper offered plaintiff a buy out plan if plaintiff resigned, and that Harper coerced him to take it by telling plaintiff he would be treated as a new teacher, observed frequently, and dismissed at the end of the year if plaintiff decided to teach during the 1983-84 year rather than resign (43). Despite such alleged coercion, plaintiff chose not to resign (44).

iii. Previous Proceedings

A. Tenure Commission Case 87-30

Plaintiff filed this case in October of 1987. In his petition, plaintiff complained of the Board's failure to recall plaintiff to vacancies from the 1981-82 school year until the time the complaint was filed. He further alleged that such failure to recall him was without a legitimate educational basis, and was done arbitrarily, capriciously, and in bad faith. Employer Defendants' Motion for Summary Judgment (Empl. Def. MSJ), Exh. 1. The Tenure Commission addressed two issues: 1) Is [Bush's] petition barred for (pg 13) untimeliness, and (2) Did [the Board] wrongfully discharge or demote [Bush] under the guise of a necessary reduction in personnel, and/or fail to recall him to the first vacancy for which he was certified and qualified pursuant to the Teachers' Tenure Act? The Commission concluded that the petition was timely filed. In considering Bush's substantive claim, it considered the allegations that Jones had placed Bush on plans of assistance. It held that the layoff of Bush and the subsequent actions were a subterfuge to avoid affording him protections guaranteed under the Tenure Act, and that the Board acted in bad faith. Empl. Def. MSJ, Exh. 2.

The Board petitioned for judicial review of the Tenure Commission decision in the Circuit Court for the County of Ottawa pursuant to the Administrative Procedures Act, M.C.L. § 824.201, et seq. and MCR 7.105. In reversing the Tenure Commission's decision, the circuit court found that the Commission's holding that the Board acted in bad faith when it laid off plaintiff was in error. It further held that there was no credible, competent, material, or substantial evidence in the whole record of subterfuge as to Bush's layoff. Finally, it held that any reference to issues which arose between 1982 and 1987 was inappropriate because those issues were resolved, either by decision or by agreement. Empl. Def. MSJ, Exh. 3, Order of 1/16/90.

Bush filed an application for leave to appeal the circuit court decision in the Michigan Court of Appeals. That application, as well as a subsequent application for rehearing of the application for leave to appeal, were denied by the Court of Appeals on July 19, 1991 and September 30, 1991, respectively. Plaintiff then filed an application for leave to appeal in the Michigan Supreme Court, which was denied on April 24, 1992, (pg 14) and a motion for reconsideration, denied on July 31, 1992. Bush's petition for a writ of certiorari was denied by the United States Supreme Court on February 22, 1993.

Through the case filed with the Tenure Commission in October of 1987, that was appealed to the Michigan state courts, Bush was able to fully litigate the issue of whether the Board's actions in laying off

plaintiff in 1981, hiring someone else to fill his position, and failing to recall him in subsequent years, through 1987, were wrongful.

B. Tenure Commission Cases 92-22 and 93-35

In case 92-22, Bush filed a petition with the Tenure Commission alleging that the Board failed to recall him to a position for which he was certified and qualified for the 1983-84 school year, and that his June 6, 1984 layoff was a subterfuge. In an order dated March 25, 1994, the Tenure Commission found that Bush's petition was barred by the doctrine of res judicata, because the actions of the Board in 1983-84 and 1984-85 had been challenged in case 87-30, and the circuit court found that issues arising in those years had been fully resolved. The Commission also found that Bush failed to state a claim with respect to his allegations of fraudulent conduct during case 87-30. Empl. Def. MSJ, Exh. 8.

In case 93-35, Bush's petition alleged a 15 year pattern of harassment and discrimination against him by the school board, complaining of the same conduct that was the subject of case 87-30. He further alleged wrongful actions by the Board and Jones that allegedly occurred between 1991 and 1993, with respect to the plans of assistance, the change in his schedule and duties, poor evaluations, and his suspensions. In addition to requesting that the Tenure Commission find the alleged conduct by (pg 15)the Board and Jones to be harassment and discriminatory, Bush requested a finding that his First Amendment rights had been violated. The Tenure Commission, referencing its Opinion in 92-22, found that the claims involving any conduct alleged to have occurred prior to 1987 were barred by res judicata because they could have been raised in case 87-30. As to the claim of demotion, the Commission found that Bush had suffered no demotion, because his suspensions were with pay. With respect to the remaining claims regarding schedule changes, plans of assistance, and constitutional claims, the Commission found that they did not arise under the Teachers' Tenure Act, and therefore it did not have jurisdiction over them. (fn2) Empl. Def. MSJ, Exh. 15, Decision & Order, 3/25/94.

Bush petitioned for a rehearing of the Commission's decisions in 92-22 and 93-35, which was denied on July 22, 1994. His petitions for review of both cases in the Circuit Court of Ottawa County were subsequently dismissed. Empl, Def. MSJ 10, 16. Appeals to the Michigan Court of Appeals and the Michigan Supreme Court were also denied.

iv. Estoppel Effect of Previous Decisions

The question the Court must now address is whether, and to what extent, the cases described above preclude this Court's consideration of plaintiffs claims.

The first issue that must be addressed is whether the three individual defendants can invoke collateral estoppel based upon the Tenure Commission cases, as they were not specifically named as defendants in those actions. Generally, under Michigan law, (fn 2

The Tenure Commission stated that it only has jurisdiction over claims involving a discharge, demotion, improper termination, or denial of recall or reemployment. Decision & Order, 3/25/94 at 5.) (pg16) collateral estoppel will only apply if the respective litigants were parties or privy to a party to the previous action, and there is a mutuality of estoppel. Braxton v. Litchalk, 55 Mich. App. 708, 719 (1974). "[T]he 'mutuality requirement' is 'coextensive with the requirement of identity of parties or privity.'" Id. at 721 (citing 31 ALR3d 1044, §§ 2(a) and 3(a), pp 1051, 1060). There is an exception to the mutuality requirement in cases involving a relationship such as a principal and agent. Braxton, 55 Mich. App. at 721. The exception will apply where the party seeking to assert collateral estoppel is seeking to do so defensively, rather than offensively, and where the one against whom collateral estoppel is asserted had an opportunity to litigate the issue in the previous suit. Id. at 723.

Here, the defendants do not meet the "same party or privity," or mutuality, requirement. However, as they are agents of the Board, which was a defendant in the previous actions, the Court can look to whether the exception to the mutuality requirement can apply to them. The first requirement is met because the defendants are seeking to invoke collateral estoppel defensively against the plaintiff. The second requirement is also met because the plaintiff in this action had an opportunity to litigate the issues in the previous actions filed with the Tenure Commission and in the subsequent appeals.

Therefore, I find that defendants Jones, Harper, and Klinge can invoke the doctrine of collateral estoppel as to any issues that were litigated and determined in the previous Tenure Commission actions between plaintiff and the Board. (pg 17)

A review of the cases described above reveals that all of the conduct that plaintiff complains of in the instant action that allegedly occurred between 1981 and 1987 was addressed in the previous actions. In those actions, the Tenure Commission and the state courts addressed the allegations in the context of whether the alleged conduct violated the Teachers' Tenure Act. Here, the plaintiff has alleged that the same conduct violated his constitutional rights. However, the issue involved

in each cause of action is the same: were the actions of the Board and Bush's employers wrongful in that they were taken in bad faith for retaliation against Bush, or were they simply the result of a reduction in personnel? The Ottawa County Circuit Court, reversing the Tenure Commission, found that there was no evidence to support a finding that the 1981 layoff was for any reason other than a necessary reduction. As to the allegations involving conduct between 1981 and 1987, the circuit court found that all of the issues had been fully resolved by grievance decisions or by agreements of the parties. Thus, subsequent actions alleging the same conduct were held to be barred by res judicata.

In case 93-35, the Tenure Commission considered the allegations regarding Bush's suspensions by Jones in 1991-92 and 1992-93. It found that the suspensions did not constitute demotions because they were with pay.

This Court is precluded from considering any issue that would be barred by res judicata or collateral estoppel in the state courts. Thus, this Court is unable to make a new determination as to whether the plaintiffs layoff in 1981 was a result of subterfuge. The state court has already decided that it was not. Furthermore, the state court decided that the issues with respect to the 1982-1987 allegations were resolved, and (pg 18) thus any claims based upon those alleged acts could not be considered. The Court must therefore adhere to the finding that those issues were resolved satisfactorily between Bush and the defendants. Such a determination necessitates a finding that the plaintiff does not have a constitutional claim for which he can prove damages. Accordingly, plaintiffs claims that are based upon allegations of actions taken by the defendants between 1981-1987 are precluded by collateral estoppel. As to the 1993 suspensions, the Court can not find that they constituted a demotion of plaintiff. Summary judgment is therefore granted in favor of defendants as to those claims.

The remaining claims that are alleged against all three defendants are that the defendants did not rehire plaintiff at the end of the 1993-94 school year, and that the defendants quit offering auto mechanics. Plaintiff can not state a constitutional claim based upon either of these allegations. Plaintiff stated in his complaint that he called in sick on the first day of school in 1993, continued to use his sick days, went on long term disability, and did not return to work the entire year. Clearly plaintiff could not have had an expectation that he would be rehired for the following year. Furthermore, a school board's decision not to offer a particular type of elective does not give rise to a constitutional claim.

The remaining allegations against Jones individually involve the supervision of plaintiff. Plaintiff complains that Jones violated his

constitutional rights when Jones: placed him on plans of assistance, requiring plaintiff to write out lesson plans and attend meetings that other teachers were not required to attend; suspended plaintiff with pay; gave him a class schedule that plaintiff did not like; and gave plaintiff a critical (pg 19) evaluation. The Court must first determine what right the plaintiff is alleging was violated. One possibility is that plaintiff is attempting to state a First Amendment retaliation claim. The complaint implies two possible theories for a First Amendment claim. The first is that plaintiff was retaliated against because of things he said. To state a prima facie case for retaliation for speech, the plaintiff must establish that the speech was on an issue of public concern, that the plaintiffs interest in making the statement outweighs the employer's interest in promoting efficiency in its operations, and that the protected speech was a substantial or motivating factor in the decision to penalize the speaker. Boger v. Wayne County, 950 F.2d 316 (6th Cir. 1991). Plaintiff states that the speech for which he was penalized was: his refusal to participate in a union-organized work slow down in 1978 (23); his signing a petition opposing rezoning and the sale of Zeeland School's athletic field across the street from his home in fall or 1980 or spring of 1981 (27); and a statement he made to the Zeeland Board of Education at a December 1992 public meeting, complaining about the treatment he received from Jones (76). Even assuming, without deciding, that these statements involve matters of public concern, plaintiff has failed to put forth any facts that would indicate that the reason Jones "disciplined" plaintiff was because of any of these statements.

The second possible retaliation theory is that Jones discriminated against plaintiff because plaintiff was not a member of the union. "[A]n employee who is disciplined solely in retaliation for his membership in and support of a union states a valid first amendment claim under Connick and Pickering." Boals v. Gray, 775 F.2d 686, 693 (6th (pg 20) Cir. 1985) (referring to Connick v. Myers, 461 U.S. 138 (1983) and Pickering v. Board of Education, 391 U.S. 563 (1968)). Again, plaintiffs complaint and supporting papers are completely devoid of any possible connection between plaintiffs refusal to join the union and Jones' actions taken in his supervisory capacity over plaintiff.

Another possible claim with respect to the alleged actions of Jones is a due process claim. However, plaintiff has failed to allege any property or liberty interest of which he was deprived. Accordingly, plaintiff has failed to state a claim, under either the First Amendment or the Due Process Clause, with respect to the alleged1 conduct specifically attributed to defendant Jones.

Plaintiff s allegations with respect to Harper and Klinge individually do not provide a basis for a claimed violation of any federal right of which this Court is aware.

E. Section 1985 Claim

Section 1985 provides a cause of action where there has been a conspiracy to interfere with an individual's civil rights. Subsection (1) applies to interference with the performance of official duties by federal officers. Kush v. Rutledge, 460 U.S. 719, 724 (1983). Subsection (2) prohibits interference with judicial processes in either federal or state court. Id. Plaintiff has not alleged any facts which would indicate that a conspiracy existed under either of these subsections. Therefore, the Court will analyze plaintiffs claim under only §1985(3).

To succeed on a claim under §1985(3), the plaintiff must allege and prove four elements: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and,(3) an act in furtherance of the conspiracy; (pg 21) 4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.

United Bros. of Carpenters & Joiners of Am., Local 610, AFL-CIO v. Scott, 463 U.S. 825, 828-29 (1983). To meet the second element, the plaintiff must show that the conspiracy was motivated by some racial or otherwise class-based invidiously discriminatory animus. Id. (citing Griffin v. Breckenridge, 403 U.S. 88, 102 (1971)). Furthermore, the plaintiff can not rest on mere conclusory allegations with no factual support. Gutierrez v.Lynch, 826 F.2d 1534, 1538 (6th Cir. 1987). To establish a claim, the plaintiff must

(1) Set forth specific facts which show either the existence or the execution of the alleged conspiracy;

(2) The facts must show overt acts which relate to the promotion of the conspiracy as well as link between the alleged conspirators; and

(3) The facts must show that the conspirators agreed to commit an act depriving the plaintiff of a right, privilege, or immunity secured by the Constitution or laws of the United States.

Lepley v. Dresser, 681 F.Supp. 418, 422 (W.D. Mich. 1988) (citing Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970)).

Plaintiff has failed to allege the second element, that the alleged conspiracy was motivated by a class-based animus. The statute does not protect individuals against conspiracies that are motivated by bias towards others based upon their economic views, status, or activities. Carpenters, 463 U.S. at 837. The Supreme Court has held that the

refusal to join a union or other anti-employer sentiment falls into that unprotected category. Id. at 838. (pg 22)

Furthermore, plaintiff has not alleged any facts that would indicate that defendants met, discussed, or agreed on anything with regard to plaintiffs constitutional rights. The complaint merely broadly alleges that the defendants all acted in concert, which is insufficient to state a cause of action under § 1985.

For these reasons, plaintiffs §1985 claim must be dismissed as to all defendants for failure to state a claim upon which relief can be granted.

F. Section 2000e Claim

From the complaint, the Court was unsure of precisely to which sections of Title 42 plaintiff wished to refer in naming § 2000 et seq. However, in his response, plaintiff cited to McDonald & Laird v. Santa Fe Trail Transport, 427 U.S. 273 (1976), which involves Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. Accordingly, the Court will analyze plaintiffs claim under that section.

Title VII prohibits discrimination by employers, employment agencies, or labor organizations to discriminate against an individual on the basis of race, color, religion, sex, or national origin. 42 U.S.C. § 20OOe-2(a)-(c). Plaintiffs complaint does not claim that the alleged actions of the defendants were based upon any of these classifications. Therefore, he has failed to state a claim under Title VII, 42 U.S.C. § 2000e, et seq.

G. Section 1988 Claim

Section 1988 provides for an award of attorney fees to a prevailing party in an action brought pursuant to civil rights laws. As the result of the dismissal of many of plaintiffs claims, and the granting of summary judgment in favor of defendants on the remaining claims, this claim must also be dismissed. (pg 23)

H. State Claims

Plaintiff also invokes this Court's pendent jurisdiction by alleging violations of state law. He alleges that defendants violated his rights under the Constitution and laws of the State of Michigan, citing specifically to the Michigan Law Public Act 4 of 1937, M.C.L. §38.71 et seq. and the Michigan Tenure Law, M.C.L. § 38.101 et seq.

The district court has discretion in determining whether to exercise jurisdiction over pendent claims. The court may exercise jurisdiction where there is a nonfederal claim "so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. §1367(a). The justification for the doctrine of pendent

jurisdiction lies in "considerations of judicial economy, convenience and fairness to litigants." United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966). The court may decline to exercise jurisdiction over a supplemental claim if:

(1)the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction. 28 U.S.C. §1367(c).(pg 24)

Here, all the federal claims against the defendants have been dismissed. Therefore, the Court declines to exercise jurisdiction over the state claims, and dismisses them pursuant to 28 U.S.C. §1367(c)(3).

1. **Alternative Bases for Dismissal**

As noted by the defendants, there are possible alternative grounds for dismissal of plaintiffs various claims, such as statute of limitations, collateral estoppel, failure to exhaust, and preemption. Although those arguments may be valid, the Court finds it unnecessary to consider them in light of its dismissal of all of the claims in the complaint on other bases.

IV. Motions for Sanctions

There have been three motions for sanctions filed by the defendants. Both sets of defendants filed motions for sanctions based upon the plaintiff filing his complaint. They allege that the complaint was filed for the purpose of harassment, and to increase the cost of litigation for defendants, noting that the issues raised in the complaint had already been litigated. The Union defendants also filed a motion for sanctions with respect to plaintiffs default judgment motion.

A. Standard for Rule 11 Sanctions

Rule 11 provides in relevant part that an attorney's or party's signature on a pleading constitutes a certification that the signer has read the pleading and "that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances. . . . it is not being presented for any improper purpose . . . ; [and] the claims, defenses, and other legal contentions therein are (pg 25) warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. .." Fed. R. Civ. P. 1 1.

When determining whether there has been a Rule 1 1 violation, the court looks to whether the party's conduct was objectively reasonable under the circumstances. Lemaster v. United States, 891 F.2d 1 1 5, 118

(6th Cir. 1989) (citing Century Prods., Inc. v. Sutter, 837 F.2d 247, 253 (6th Cir. 1988)). Where the court finds a violation of Rule 11, it must impose sanctions. Albright v. Upjohn Co., 788 F.2d 1217, 1222 (6th Cir. 1986). The type of sanction imposed is within the discretion of the court. Id.

It is not uncommon for sanctions to be imposed in civil rights cases. See, e.g., Thomas v. Capital Security Services, Inc., 836 F.2d 866 (5th Cir. 1988); Cabell v. Petty, 810 F.2d 463 (4th Cir. 1987); Goylar v. McCausland, 738 F.Supp. 1090 (W.D. Mich. 1990). However, the court must be mindful of the chilling effect that the imposition of a sanction could have upon a case involving civil rights, and should only impose sanctions in such cases where the claim has been found to be frivolous, unreasonable, or groundless. Morrison v. Lipscomb, 877 F.2d 463, 469 (6th Cir. 1989). Furthermore, the fact that plaintiff filed pro se does not insulate him from sanctions, as Rule 11 applies to "an attorney or party." Goylar, 738 F.Supp. at 1098 (citing other cases in which sanctions have been imposed against pro se plaintiffs). Nevertheless, pleadings of pro se litigants are to be held to less stringent standards than those filed by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972).

When considering the appropriate sanction, the court should impose the least severe sanction adequate to serve the purpose of the sanction, taking into account the (pg 26) sanctioned person's ability to pay. Orlptt v Cincinnati Microwave, Inc., 954 F.2d 414, 419 (6th Cir. 1992). Such a sanction can be non-monetary such as a reprimand or a censure. Id. at 420. The primary goal of a Rule 11 sanction is deterrence, and compensation is a secondary goal. Id.

B. Discussion

As is apparent by the above discussion of many of plaintiffs claims, plaintiff alleged violations of numerous statutes without knowing what elements he would be required to allege to state a prima facie case under those statutes. For example, he failed to allege sufficient facts to state a prima facie case under §§ 1981, 1985, and 2000e.

Prior to filing this complaint, plaintiff had filed the three tenure commission cases discussed above, two of which were dismissed as barred by res judicata, had appealed each at least through the Michigan Supreme Court, had filed a civil complaint in state court that was dismissed because the statute of limitations had run, and had filed numerous grievances. In its opinion dismissing that case, the circuit court also noted the possibility that had the claims not been barred by the statute of limitations, they might have been barred by res judicata. Thus, it is clear that plaintiff should have been aware that many of his claims

would be barred in this Court because he had already had the chance to litigate them.

Plaintiffs inclusion of many claims for which there was no basis, and of claims that have previously been litigated and have been previously dismissed because they had been litigated constitute a Rule 11 violation. However, it appears from plaintiff's (pg 27) complaint that he believed because he stated different causes of actions, he would be able to litigate the issues once again, this time in federal court. Collateral estoppel is a difficult concept to understand even for attorneys. Therefore, as a sanction, this Court orders that plaintiff shall not attempt to file any other actions with respect to the issues he has raised in this complaint.

Rule 55 of the Federal Rules of Civil Procedure, which explains when a party is entitled to a default judgment, is straightforward. A simple reading of the rule would have informed plaintiff that the defendants were not in default because they had filed a motion to dismiss. A litigant in federal court is responsible for being aware of the Rules, and plaintiff should have read the rule prior to filing the motion for default judgment. His motion did indeed violate Rule 11, because it is entirely groundless, and plaintiff should have been aware of that fact. However, his error did not require a significant amount of defendants' time or resources, as it was so clearly meritless. Therefore, with respect to plaintiffs motion for default judgment, a reprimand is hereby issued, warning plaintiff that if he ever again chooses to proceed in federal court, he should obtain a copy of the Federal Rules and refer to them before he files his pleadings or motions.

V. CONCLUSION

For the foregoing reasons, plaintiffs motion for default judgment is denied. Defendants' motions to dismiss and for summary judgment are granted.

DATED in Kalamazoo, MI:
Feb. 27, 1997

s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
Chief Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

GERALD D. BUSH,
Plaintiff,

v File No. 1:96 CV 420

ZEELAND BOARD OF EDUCATION, MICHAEL Z. JONES; KENNETH HARPER; JAY KLINGE; ZEELAND EDUCATION ASSOCIATION; WILLIAM ROBERTSON; JAMES GALER; ROBERT LARSEN; MICHIGAN EDUCATION ASSOCIATION; and MARY ANN ZIMMERMAN, All defendants are sued in their personal and official capacities; HON. RICHARD ALAN ENSLEN

Defendants.

JUDGMENT

In accordance with the Opinion issued this date;

IT IS HEREBY ORDERED that the union defendants' motion to dismiss plaintiff s complaint, filed September 17, 1996 (dkt. #6), is **GRANTED;**

IT IS FURTHER ORDERED that the employer defendants' motion for judgment on the pleadings and/or summary judgment, filed September 27, 1996 (dkt. #12), is **GRANTED;**

IT IS FURTHER ORDERED that plaintiffs motion for entry of default judgment, filed November 4, 1996 (dkt. #17), is **DENIED;**

IT IS FURTHER ORDERED that the union defendants' motion for judgment on the pleadings and/or summary judgment, filed November 26, 1996 (dkt. #30), is **GRANTED;**

IT IS FURTHER ORDERED that defendants' motions for sanctions, filed November 8, 1996 and January 6, 1997 (dkt. ##20 & 43), are **GRANTED;**

IT IS FURTHER ORDERED that plaintiff shall not attempt to file any other actions with respect to the issues raised in the complaint;

IT IS FURTHER ORDERED that the union defendants' motion for sanctions with respect to plaintiffs default judgment motion, filed December 3, 1996 (dkt. #35), is **GRANTED;**

IT IS FURTHER ORDERED that plaintiff shall not file additional pleadings or motions in any federal court without first familiarizing himself with the Federal Rules of Civil Procedure;

IT IS FURTHER ORDERED that this case is **DISMISSED.**

DATED in Kalamazoo, MI: s/ Richard A. Enslen
February 27, 1997 RICHARD ALAN ENSLEN
Chief Judge

Appendix D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
Filed April 16, 1997

GERALD D. BUSH,
Plaintiff ,
v

File No. 1:96 CV420
HON. RICHARD ALAN ENSLEN

ZEELAND BOARD OF EDUCATION,
MICHAEL Z. JONES; KENNETH HARPER;
JAY KLINGE;
ZEELAND EDUCATION ASSOCIATION;
WILLIAM ROBERTSON;
JAMES GALER; ROBERT LARSEN;
MICHIGAN EDUCATION ASSOCIATION;
and MARY ANN ZIMMERMAN,
All defendants are sued in their personal
and official capacities; Defendants.

ORDER

This matter is before the Court on plaintiff's motion to extend time to appeal and motion for clarification of decision before appeal, filed March 28,1997. Plaintiff requests an extension of time to file an appeal because he is preparing documents for other cases. The Court finds good cause to grant an extension of thirty (30) days to file his notice of appeal, pursuant to 28 U.S.C. § 2107(c).

With respect to plaintiff's motion for clarification, the Court determines that the previous Opinion and Order are sufficiently clear, and were entered in accordance with Federal Rules of Civil Procedure 56 and 58. Therefore, the Court finds that no further clarification is necessary. Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to extend time to appeal and motion for clarification of decision before appeal, filed March 28, 1997 (dkt. # 57), is **GRANTED** in part and **DENIED** in part;

IT IS FURTHER ORDERED that plaintiff shall have thirty (30) days from the date of service of this Order with which to file his notice of appeal.

Dated in Kalamazoo, MI:
4/16/1997

s/Richard A. Enslen
RICHARD ALAN ENSLEN
Chief Judge

Appendix E
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NO: 97-1576
Filed: November 25, 1997

GERALD D. BUSH
Plaintiff - Appellant

V.

ZEELAND BOARD OF EDUCATION; MICHAEL Z. JONES; KENNETH HARPER; JAY KLINGE; ZEELAND EDUCATION ASSOCIATION; WILLIAM ROBERTSON; JAMES GALER; ROBERT LARSEN; MICHIGAN EDUCATION ASSOCIATION; MARY ANN ZIMMERMAN

Defendants - Appellees

MANDATE

Pursuant to the court's disposition that was filed 11/3/97
the mandate for this case hereby issues today.

A True Copy.
Attest:
s/Beth Manning
Deputy Clerk

Appendix F
Case No: 97-1576
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

filed DEC 2 2 1997
LEONARD GREEN, *Clerk*

GERALD D. BUSH
Plaintiff - Appellant

V.

ZEELAND BOARD OF EDUCATION; MICHAEL Z. JONES; KENNETH' HARPER; JAY KLINGE; ZEELAND EDUCATION ASSOCIATION; WILLIAM ROBERTSON; JAMES GALER; ROBERT LARSEN; MICHIGAN EDUCATION ASSOCIATION; MARY ANN ZIMMERMAN
Defendants - Appellees

BEFORE: KRUPANSKY, RYAN, and BATCHELDER, Circuit Judges

The appellant has submitted a motion to recall the mandate and for an extension of time in which to file a petition for rehearing. Counsel for the appellees have responded in opposition. Upon consideration, it is

ORDERED that the motion be denied in its entirety.

ENTERED BY ORDER OF THE COURT
s/ Leonard Green,
Leonard Green, Clerk

Appendix G
LAW AND RULE QUOTATIONS

1. Federal Rules of Civil Procedure

Rule 1. Scope and Purpose of Rules

These Rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

2. 28 USC sec 2107. Time for appeal to court of appeals.

(c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon showing of excusable neglect or good cause. In addition, if the district court finds - - . . . "

3. Federal Rules of Appellate Procedure

Rule1. Scope of Rules and Title

(b) Rules Not to Affect Jurisdiction.

These rules shall not be construed to extend or limit the jurisdiction of the court of appeals as established by law.

Rule 4. Appeal as of Right - When Taken.

(1) Except as provided in paragraph (a)(4) of this Rule, in a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 must be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from;

(4) If any party files a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion under the Federal Rules of Civil Procedure:

(A) for judgment under Rule 50(b);

(B) to amend or make additional findings of fact under

Rule 52(b), whether or not granting the motion would alter the judgment;

(C) to alter or amend the judgment under Rule 59;

(D) for attorney's fees under Rule 54 if a district court under Rule 58 extends the time for appeal;

(E) for a new trial under Rule 59; or

(F) for relief under Rule 60 if the motion is filed no later than 10 days after entry of judgment.

A notice of appeal filed after announcement or entry of the judgment but before disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Appellate Rule 3(c), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment shall file a notice, or amended notice, of appeal within the time prescribed by this Rule 4 measured from the entry of the order disposing of the last such motion outstanding. No additional fees will be required for filing an amended notice.

(5) The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4(a). Any such motion which is filed before the expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

4. US Court of Appeals for the 6th Circuit, Local Rules.

Rule 8, Motions and Motion Practice

(b) Procedural Motions

The clerk may prepare, sign and enter orders or otherwise dispose of the following matters without submission to the court or a judge, unless otherwise directed:

(1) Motions and applications for orders that are procedural or relate to the production or filing of the appendix or briefs on appeal:

(2) Orders for voluntary dismissal of appeals or petitions, or for consent judgments in National Labor Relations Board cases;

(3) Orders for dismissal for want of prosecution of appeals or petitions;

(4) Orders appointing counsel under the Criminal Justice Act of 1984, as amended, in criminal cases appealed is entitled to appointment of counsel under the Sixth Circuit Plan for the Implementation of the Criminal Justice Act and in any other case in which an order directing the clerk to appoint counsel has been entered;

(5) Bills of cost filed pursuant to Fed. R. App. P. 39(c)

(6) A fourteen (14) day extension of time in which to file a petition for rehearing or rehearing en banc;

(7) Orders remanding appeals where a party has requested such relief and no other party has objected thereto, or where the parties have moved jointly, where such motion is accompanied by the certification of the district court pursuant to First National Bank of Salem, Ohio v Hirsch, 535 F.2d 343 (6th Cir 1976); and

(8) Orders dismissing as duplicative a second appeal filed by or on behalf of a party, where there has been docketed in the court of appeals a jurisdictionally sound appeal from the same judgment or final order sought to be reviewed in the first appeal.

Orders by the clerk disposing of such motions shall show that they were entered by the clerk pursuant hereto.

Related Federal Rule of Appellate Procedure: Fed.R.App.P. 27

Comment: FRAP 27 sets forth the general procedures for motions practice. 6th Cir R. 8(a) addresses the specific requirements for motions to dismiss. 6th Cir R 8(b) implements the authority given by FRAP 27(b) to identify those orders that the clerk may enter without sub-mission to the court and without response by the opposing party. It also establishes the procedure for seeking reconsideration of the clerk's rulings.

(from Local Rules of 6th Circuit.)

5. 28 USC sec 1654. Appearance personally or by counsel.

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

Appendix H

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

January 22, 1998

Mr. Gerald D. Bush
724 E. Central
Zeeland, MI 49464

Re: Gerald D. Bush, Petitioner v. Zeeland Board of Education, et al.
Application No. A-530

Dear Mr. Bush:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on January 22, 1998, extended the time to and including April 2, 1998.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk
By s/ Melissa A. Blalock
Melissa A. Blalock
Assistant Clerk